



# भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित  
PUBLISHED BY AUTHORITY  
साप्ताहिक  
WEEKLY

सं. 10] नई दिल्ली, मार्च 1—मार्च 7, 2015, शनिवार/फाल्गुन 10—फाल्गुन 16, 1936

No. 10] NEW DELHI, MARCH 1—MARCH 7, 2015, SATURDAY/PHALGUNA 10—PHALGUNA 16, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 3 फरवरी, 2015

**का.आ. 425.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत नवोदय विद्यालय समिति के जवाहर नवोदय विद्यालय, दादरी, गौतम बुद्ध नगर (उत्तर प्रदेश) को ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं० 11011-3/2014-राभाए]  
सुखबीर सिंह संधु, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O.L. UNIT)

New Delhi, the 3rd February, 2015

**S.O. 425.**—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the **Jawahar Navodaya Vidyalaya, Dadri, Gautam Budh Nagar (Uttar Pradesh)** of Navodaya Vidyalaya Samiti under the Ministry of Human Resource Development, (Department of School Education & Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-3/2014-OLU]  
SUKHBIR SINGH SANDHU, Jt. Secy.

नई दिल्ली, 27 जनवरी, 2015

**का.आ. 426.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (स्कूल शिक्षा एवं साक्षरता विभाग) के अंतर्गत **केन्द्रीय विद्यालय संगठन (मुख्यालय), नई दिल्ली के केन्द्रीय विद्यालय, ऊटी, एच पी एफ, इंदुनगर, ऊटकमंड-643 005** को ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी-वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 11011-3/2014-राभाए]

सुखबीर सिंह संधु, संयुक्त सचिव

New Delhi, the 27th January, 2015

**S.O. 426.**—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the **Kendriya Vidyalaya, Ooty, HPF Indunagar, Ootacamund-643 005 of Kendriya Vidyalaya Sangathan (HQ), New Delhi** under the Ministry of Human Resource Development, (Department of School Education & Literacy) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-3/2014-O.L.U]

SUKHBIR SINGH SANDHU, Jt. Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

(राजभाषा प्रभाग)

नई दिल्ली, 4 मार्च, 2015

**का.आ. 427.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कृषि मंत्रालय, कृषि एवं सहकारिता विभाग के सार्वजनिक क्षेत्र का उपक्रम राष्ट्रीय बीज निगम लिमिटेड, नई दिल्ली के अंतर्गत निम्नलिखित प्रशासनिक नियंत्रणाधीन कार्यालय को जिसके 80% कर्मचारी वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:—

राष्ट्रीय बीज निगम लिमिटेड  
केन्द्रीय राज्य फार्म, जैतसर  
जिला — श्रीगंगानगर-335785  
राजस्थान

[सं. 3-3/2011-राभानी]

आर.बी. सिन्हा, संयुक्त सचिव

## MINISTRY OF AGRICULTURE

(Department of Agriculture & Cooperation)

(Official Language Division)

New Delhi, the 4th March, 2015

**S.O. 427.**—In pursuance of sub. rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the following office which is under the administrative control of the National Seeds Corporation Limited, New Delhi an undertaking of the Department of Agriculture & Cooperation, Ministry of Agriculture, whereof 80% staff have acquired the working knowledge of Hindi.

National Seeds Corporation Limited  
Kendriya Rajya Farm, Jaitsar  
Distt. - Sriganganagar-335785  
(Rajasthan)

[No. 3-3/2011-Official Language Policy]

R.B. SINHA, Jt. Secy.

## स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 22 दिसम्बर, 2014

**का.आ. 428.**—दंत चिकित्सक अधिनियम, 1948 (1948 का 16) के खण्ड 10 के उप-खंड (2) द्वारा प्रदत्त षवितियों का प्रयोग करते हुए, केंद्र सरकार भारतीय दंत चिकित्सा परिषद के साथ परामर्श के बाद, एतद्वारा उक्त अधिनियम की अनुसूची के भाग-I में निम्नलिखित संशोधन करती है नामतः :—

2. दंत चिकित्सक अधिनियम, 1948 (1948 का 16) की अनुसूची के भाग-I में क्रम सं. 56 के कॉलम 2 और 3 की मौजूदा प्रविष्टियों में कृष्णाष्टल कॉलेज, गाजियाबाद के सामने चौ. चरण सिंह विष्वविद्यालय, मेरठ द्वारा प्रदत्त दंत चिकित्सा की डिग्री की मान्यता के संबंध में निम्नलिखित प्रविष्टियों को शामिल किया जाएगा नामतः :—

## मास्टर ऑफ डेंटल सर्जरी

“(i) बेचलर ऑफ डेंटल सर्जरी बीडीएस (यह मान्यताप्राप्त दंत चिकित्सा अर्हता होगी यदि कृष्णाष्टल कॉलेज, गाजियाबाद में केवल 2009-10 सत्र में प्रशिक्षित और दाखिला किए जा रहे छात्रों के संबंध में चौ. चरण सिंह विष्वविद्यालय, मेरठ द्वारा एक-बारगी उपाय के रूप में प्रदान की गई हो जिसे भविष्य में पूर्व उदाहरण के रूप में उद्धृत नहीं किया जाएगा)”

[फा. सं. वी-12017/22/2004-डीई]

सुधीर कुमार, अवर सचिव

**MINISTRY OF HEALTH AND FAMILY WELFARE****(Department of Health and Family Welfare)**

New Delhi, the 22nd December, 2014

**S.O. 428.**—In exercise of the powers conferred by sub-section (2) of section 10 of the Dentists Act, 1948 (16 of 1948), the Central Government, after consultation with the Dental Council of India, hereby, makes the following amendments in Part-I of the Schedule to the said Act, namely:—

2. In the existing entries of column 2 & 3 against Serial No.56, in Part-I of the Schedule to the Dentists Act, 1948 (16 of 1948) pertaining to recognition of dental degrees awarded by Ch. Charan Singh University, Meerut against Krishna Dental College, Ghaziabad the following entries shall be inserted thereunder:-

“(i) Bachelor of Dental Surgery	BDS (This shall be a recognized dental qualification when granted by Ch. Charan Singh University, Meerut to the students being trained and admitted in the academic session 2009-10 only, at Krishna Dental College, Ghaziabad as a one time measure not to be quoted as precedent in future)”.  [F. No. V. 12017/22/2004-DE]  SUDHIR KUMAR, Under Secy.
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**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 429.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 20/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22012/126/2003-आईआर (सीएम-2)]  
मो. जाहिर शरीफ, अनुभाग अधिकारी

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 25th February, 2015

**S.O. 429.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/04) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial

dispute between the management of Jamuna & Kotma Area of SECL, and their workmen, received by the Central Government on 25/02/2015.

[No. L-22012/126/2003 - IR(CM-II)]  
MD ZAHID SHARIF, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

NO. CGIT/LC/R/20/04

Secretary,  
M.P. Koyla Shramik Sangh,  
Branch Jamuna,  
Distt. Shahdol (MP)

Workman/Union

**Versus**

General Manager,  
Jamuna & Kotma Area of SECL,  
PO Jamuna, Distt. Shahdol.

Management

**AWARD**

Passed on this 6th day of February, 2015

1. As per letter dated 23-2-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/126/2003-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of SECL in not giving pay protection to Shri Lias Ansari on his promotion from Loader to Mining Sirdar-cum-Shot Firer from 24-10-89 is legal and justified? If not, to what relief he is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 12/1 to 12/3. Case of workman is that he was initially appointed as labour on 4-7-80 by IInd party. He worked with honesty till 6-5-89. Workman obtained certificate of Mining Sirdar. He was authorized to work as Mining Sirdar/Shot firer as per order dated 7-5-89. In the year 1989, INMOSSA went on strike. During strike period, services of workman were utilized for work of Mining Sirdar/shot firer. It is submitted that workman was promoted as Mining Sirdar/Shot firer from 24-9-89 in pay scale Rs. 1272-40-1702-66-2230. However his pay was fixed at Rs. 1272/-. That on date of his promotion, he was received wages Rs. 1834.30 as piece rated loader. That he was departmental candidate promoted from post of piece rated labour to Mining Sirdar. He submits that his pay should have been fixed Rs. 1834.30 +66= 1900.30. There was no stage of

Rs. 1900 in the pay scale. His pay should have been fixed Rs. 1966/- that workman submitted repeated representations but his request for correct fixation of pay was not considered. After great efforts, IInd party agreed to protect his pay giving him personal pay. Arrears of Rs. 72,188.48 paid to him.

3. It is submitted that Chief General Manager, SECL issued certificate dated 17-2-95 allowing pay protection in case of piece rated workman on conversion or regularization to time rated, monthly rated. Since workman was promoted/declined on basis of administrative exigencies, he is entitled to pay protection. Management agreed to protect pay of workman who were observed as Mining Sirdar and deployed by management in the meeting held on 13-11-95. However workman was not provided benefit of pay protection. On such grounds workman is praying to direct management to provide benefit of pay protection and payment of arrears.

4. IInd party filed Written Statement at Page 13/1 to 13/13. Claim of workman is opposed. The pay protection claimed by workman 14-10-89. The dispute is raised after 15 years. Claim is highly belated and not tenable. IInd party referred to ratio held in AIR-2000-SC-839 & 2001-LLR-1112. IInd party further submits that Coal Mines are nationalized as per National Mines Nationalisation Act, 1973. For administrative convenience, the function is carried through subsidiary company including SECL. The service conditions are covered by NCWA, cadre scheme. As per cadre scheme for mining supervisory employees starts from T&S Grade C. The employees are selected depending on statutory certificates called competency certificate, Gas testing Certificate issued by DGNS. I.I.No.33 issued on 22-6-88 prescribed experience and qualifications for departmental candidates promotion/selections. Candidate must be literate, have more than 5 years experience in mine working. Promotion through DPC on unit basis sanctioned vacancies. It is reiterated that the workman obtained competency certificate was selected as Mining Sirdar. That as per circular dated 21-9-89, delegation of powers of Chief General Manager/ Manager delegated. It is reiterated that workman was not promoted but he was selected as departmental candidate.

5. Management invited application from eligible candidates as and when vacancies of Mining Sirdar arose. There is selection Committee called DPC conducting selection process. There is no compulsion on part of departmental candidates selected to the statutory post to join their duties. Workman cannot claim the pay scale of piece rated post and work of Mining Sirdar. That office orders issued dated 28-6-89 not allowing pay protection. Such employees can be reverted back to their original post. The decision taken in the meeting dated 27-6-94 allowed pay protection when such employees are deployed by

management in regularization cases but in case they have obtained/selected against advertisement, pay protection is not allowed. The circular dated 17-2-95 provides for payment of SPRA till employee worked on piece rated job prior to conversion. That workman were placed in Category/ scale SPRA applicable to the individual at the time of fixation. In meeting between 13th Nov 95 allowed pay protection to Mining sirdar in case of regularization and not in case of their absence or selection. IInd party submits that as workman was selected, he was not promoted, he is not entitled to pay protection. Workman was selected as Mining Sirdar. Prior to it, he was appointed as loader in 1980. Workman is not entitled to pay protection. His pay is correctly placed for the post of mining Sirdar after his selection. On such ground, IInd party prays for rejection of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                     |
|--|---------------------|
| (i) Whether the action of the management of SECL in not giving pay protection to Shri Lias Ansari on his promotion from Loader to Mining Sirdar cum Shot Firer from 24-10-89 is legal and justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?"  | As per final order. |

#### REASONS

7. Workman is praying pay protection on his promotion to the post of Mining Sirdar from 24-9-89. IInd party opposed his claim on the ground that workman was not promoted. He was selected as Mining Sirdar. The post are as per the cadre scheme. Workman was not regularized by management. He is not entitled to pay protection. Workman filed affidavit of his evidence stating that he was promoted from post of labour to Mining Sirdar from 24-9-89. The order was issued on 9-11-89 he was receiving pay of Rs. 1834.30 on post of labour. While fixing his pay, he should have been allowed one increment for promotion. His pay should have been fixed Rs. 1834.30 +66=1900.30. In his cross-examination, workman says he was appointed as labour. He was working as piece rated labour till 1989. He had not given application for post of Mining Sirdar/ Shot Firer. The post was not advertised. When he was posted as Mining Sirdar, strike was continued. No DPC was held. He had passed competency certificate. He was paid wages as piece rated loader. There is cadre scheme for promotion to Mining Sirdar. That he worked as Mining Sirdar on direction of management. He was claiming pay protection since beginning. The services are covered by NCWA.



8. Management's witness Shri P.S.Mundra filed affidavit of his evidence supporting contentions in Written Statement filed by IInd party. Departmental candidate who desired selection to statutory post are required to submit application. There is selection committee called DPC. DPC conduct selection process successful candidates including departmental candidates are given offer to the post. The pay protection claimed by workman cannot be granted. That certificate dated 17-2-95 provides- in case of piece rated workman who applied or have been converted into time rated against selection are not entitled to pay protection. In his cross-examination, management's witness says he filed affidavit of his evidence . he knows that workman was working during strike period. He claims ignorance whether workman submits option form to office. Pay of workman was protected in case management engaged workman to other work. He admits that workman was working as Mining Sirdar. He also admits that pay of workman was protected by office. The documents are not produced on record. He denies that pay of workman is wrongly fixed.

9. The documents produced by workman Exhibit W-1 to W-10. W-1 shows workman was authorized to work as Mining Sirdar on 7-5-89. Exhibit W-2 order shows on recommendation of DPC, the employees were promoted as Mining Sirdar cum Shot firer from 24-9-89. Order refers to recommendation of DPC. Workman was promoted. In Exhibit w-3, office note, it is observed that management expressed that wage protection will be given in case they have been deployed by management i.e. in regularization cases. That in case they have opted/ selected against advertisement, no protection will be given to them. The evidence of management witness shows workman was working during strike period. Management has not produced any documents advertising the post of Mining Sirdar. Rather in Exhibit W-2, workman is shown promoted. In Exhibit W-4 also workman was shown promoted and his pay was fixed allowing personal pay at different rates. Workman was promoted as per Exhibit W-2. He was receiving pay Rs. 1834.30 as piece rated loader as per rules on promotion, he was entitled to one increment. Thus pay should have been fixed Rs. 1900.30. the wages Rs. 1834.30 needs to be rounded up to Rs. 1834/- . The submissions of workman that there is no stage in the pay scale of Rs. 1900.30 and therefore his pay should be fixed to Rs. 1966/- cannot be accepted. The wages less than 50 paise needs to be rounded up to Rs. 1834 and then allowing one increment on promotion, the pay of workman should have been fixed Rs. 1900 on his promotion to the post of Mining sirdar from 24-9-89. So far as pay protection claimed by workman, workman was promoted on 24-9-89. The circular dated 17-2-95 cannot be given retrospective effect.

The claim for pay protection is against rules is not proper. Incidentally learned counsel for IInd party Shri Shashi has produced copies of award in R/149/96. Said reference was decided exparte against workman cannot be beneficially relied.

The copies of judgments in 828/97 Award in R/263/00 by CGIT, Nagpur. The facts are not comparable. Next reliance is placed in case of BHEL and another versus B.K.Vijay and others reported in 2006(2)SCC654. Their Lordship dealing with promotion and entitlement held there is no automatic promotion to a higher post and consequential pay scale thereof merely because the Status of the appointee has been enhanced for the purposes of a particular Act. Under relevant promotion rules, manuals etc of the appellant company before promotion to a higher post one must hold a post next below that post for the prescribed period."

In present case, cadre scheme provides 5 years experience for post of Mining Sirdar which contemplates there are feeder post. Workman was working as tub loader from 1980. In 1989, he acquired competency certificate from DGMS. In Exhibit W-2, workman and others are shown promoted to the post of Mining Sirdar/ Shot Firer. Considering totality of the evidence, it is clear that though workman is not entitled for pay protection as per Circular dated 17-2-95, on his promotion, he was entitled to one increment. His pay should have been fixed Rs. 1900/-. The request of workman was not accepted. Therefore action of the management is not legal and proper. Therefore I record my finding in Point No.1 in Negative.

10. In the result, award is passed as under:-

- (1) The action of the management of SECL in not giving pay protection to Shri Lias Ansari on his promotion from Loader to Mining Sirdar cum Shot Firer from 24-10-89 is not legal.
- (2) IInd party is directed to fix pay of workman on his promotion to the post of Mining Sirdar from 24-9-89 at Rs.1900/- per month.

IInd party is directed to pay difference of emolument to workman within 30 days from date of publication of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 430.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन. एल. सी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 17,18,20 एवं 21/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22012/159/2011-आईआर (सीएम-II)

सं. एल-22012/161/2011-आईआर (सीएम-II),

सं. एल-22012/156/2011-आईआर (सीएम-II),

सं. एल-22012/158/2011-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 430.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17, 18, 20 & 21 of 2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of NLC, and their workmen, received by the Central Government on 25/02/2015.

[No-L-22012/159/2011 - IR(CM-II),

No-L-22012/161/2011 - IR(CM-II),

No-L-22012/156/2011 - IR(CM-II),

No-L-22012/158/2011 - IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 5th February, 2015

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 17, 18, 20 and 21/2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Neyveli Lignite Corporation Ltd. and their workman)

#### BETWEEN

#### ID 17/2012

The General Secretary : 1st Party/Petitioner Union  
NLC Anna Thozhilalar  
Uzhiyar Sangam

D-3, Vaira Salai, Vattam-17  
Neyveli-607801

AND

The Chairman-cum- : 2nd Party/Respondent  
Managing Director  
Neyveli Lignite Corporation Ltd.  
Neyveli.

#### ID 18/2012

The General Secretary : 1st Party/Petitioner  
Union NLC Workers  
Progressive Union  
D-50, Anna Salai, Vattam-25  
Neyveli-60780

AND

The Chairman-cum- : 2nd Party/Respondent  
Managing Director  
Neyveli Lignite Corporation Ltd.  
Neyveli

#### ID 20/2012

1. The General Secretary : 1st Party/1st Petitioner  
NLC Workers Solidarity Union Union  
A-2, Screw Lane, Bock-11  
Neyveli-607803

2. The General Secretary : 1st Party/2nd Petitioner  
NLC Mazdoor Sangh, Union  
Vishwakarma Bhawan  
D-24, Perumal Koil Salai,  
Block-27  
Neyveli-607803

AND

The Chairman-cum- : 2nd Party/Respondent  
Managing Director  
Neyveli Lignite  
Corporation Ltd.  
Neyveli

#### ID 21/2012

The General Secretary : 1st Party/Petitioner Union  
NLC Labour &  
Staff Union, Block-24  
Neyveli-607803

AND

The Chairman-cum- : 2nd Party/Respondent  
Managing Director  
Neyveli Lignite  
Corporation Ltd.  
Neyveli

S. No.	I.D. No.	Reference No. & Date	Name of the I Party S/Shri	Name of the II Party	Appearance for Workman/Union(s)	Appearance for Respondent
1.	17/2012	L-22012/159/2011-IR (CM.II) dated 20.03.2012	The General Secretary NLC Anna Thozhilalar Uzhiyar Sangam D-3, Vaira Salai, Vattam-17 Neyveli-607801	The Chairman-cum-Managing Director, NLC Ltd., Neyveli	M/s. V. Ajoy Khose, A.S. Manogaran, Advocates	M/s. T.S. Gopalan & Co., Advocates.
2.	18/2012	L-22012/161/2011-IR (CM.II) dated 20.03.2012	The General Secretary NLC Workers Progressive Union D-50, nna Salai, Vattam-25 Neyveli-607803	The Chairman-cum-Managing Director, NLC Ltd., Neyveli	M/s. Kumbakonam R. Ramamurthy, Advocates	M/s. T.S. Gopalan & Co., Advocates.
3.	20/2012	L-22012/156/2011-IR (CM.II) dated 20.03.2012	1. The General Secretary NLC Workers Solidarity Union A-2 Screw Lane, Block-11, Neyveli-607803 2. The General Secretary NLC Mazdoor Sangh Vishwakarma Bhawan D-24, Perumal Koil Salai Block-27 Neyveli-607803	The Chairman-cum-Managing Director, NLC Ltd., Neyveli	M/s. V. Ajoy Khose, A.S. Manogaran, Advocates-Petitioner No. 1  M/s. G.B. Saravanabhawan, N. Chinnaraj, Advocates-Petitioner No. 2	M/s. T.S. Gopalan & Co., Advocates.
4.	21/2012	L-22012/158/2011-IR (CM.II) dated 20.03.2012	The General Secretary NLC Labour and Staff Union, Block-24 Neyveli - 607803	The Chairman-cum-Managing Director, NLC Ltd., Neyveli	M/s. Row & Reddy, Advocates	M/s. T.S. Gopalan & Co., Advocates

### COMMON AWARD

The Central Government, Ministry of Labour & Employment vide the above order of references referred the IDs to this Tribunal for adjudication.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

#### **ID 17/2012**

*“Whether the action of the management of Neyveli Lignite Corporation Ltd., in proposing the change of increase in working hours in Administrative Office of NLC Ltd., is justified or not? To what relief the concerned workmen are entitled to?”*

#### **ID 18/2012**

*“Whether the action of the management of Neyveli Lignite Corporation Ltd., in proposing the change of increase in working hours in Administrative Office of NLC Ltd. is justified or not? To what relief the concerned workmen are entitled to?”*

#### **ID 20/2012**

*“Whether the action of the management of Neyveli Lignite Corporation Ltd. in proposing the change of increase in working hours in Administrative Office of NLC Ltd. is justified or not? To what relief the concerned workmen are entitled to?”*

#### **ID 21/2012**

*“Whether the action of the management of Neyveli Lignite Corporation Ltd. in proposing the change of increase in working hours in Administrative Office of NLC Ltd. is justified or not? To what relief the concerned workmen are entitled to?”*

3. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 17, 18, 20 and 21 of 2012 and issued notices to the parties. The parties have entered appearance and filed their Claim and Counter Statement as the case may be.

4. Though the dispute was raised by different unions of NLC Ltd. consequent to the NLC Management issuing notice under Section-9A of the Industrial Disputes Act, Claim Statements in all the matters are filed by the Management since they were trying to bring some change in the working conditions of a section of the workmen of NLC Ltd. after giving notice under Section-9A of the Act and wanted to justify their case for the change. Rather than as Petitioner and Respondent or First Party and Second Party, the parties are hereafter referred to as Management and the Unions, the opposing party in all the IDs being a Union the members of which will be affected by the proposed change.

5. The averments in the Claim Statement filed by the Management in ID 17/2012 are as below:

NLC is a Government of India undertaking engaged in the mining of Lignite in Neyveli, Cuddalore District of

Tamil Nadu and is running a Thermal Station for generation of electricity. It is carrying on mining operations in three mines and three thermal stations. It is having a central workshop for maintenance and repair of machinery and for fabrication of required spare parts. It is having huge residential colony where housing is provided to all categories of employees. It is also having an administrative office. Employees of NLC who answer to the definition of “workman” within the meaning of Section-2(s) of the ID Act are members of 15 Trade Unions of which two are recognized as Bargaining Agents to negotiate on behalf of the workmen. There are also staff category of employees coming under the meaning of workmen as defined in Section-2(s) of the ID Act. For historical reasons the periods of work of the employees of different category are differently fixed and observed without any serious application of mind. The workmen employed in the mines and factory establishments are required to come on rotational shifts with uniform working hours of 8 hours with half an hour lunch recess. There are administrative non-factory and non-field staff observing less working hours. So departmental functions could not be performed properly. While the workmen employed in the workshop, mines and other factory establishments are allowed only four national holidays and five festival holidays, the administrative staff are enjoying 16 holidays a year. Some of the workmen in the mines and factory establishments have to perform some work in the pre and post hours of work for which they were enjoying special privilege of availing two/three days of compensatory off in a month. There is no justification for grant of this concession. Even among the workmen who report for work in rotational shifts, they do not work in the same group and relay. The Corporation has been trying to bring in uniformity in the matter of observing relay and groups of the workmen required to work in factory establishments and mines. Basic Pay, VDA and HRA were uniformly fixed for each category of cadre of employees without reference to variation in the hours of work. This has caused dissatisfaction among the employees. Whenever charter of demands were submitted after expiry of the long-term settlement, the management used to list out its requirement such as uniform hours of work and holidays for all category of workmen, discontinuance of compensatory off and introduction of uniform pattern of shift relay working. After Justice Jagannatha Rao’s Committee’s report on revision of pay and allowances, the Unions wanted the management to revise the allowances payable to the workmen on par with the non-unionized supervisors and executives. The Management informed the unions that if the workmen agreed to remove the differences in the matter of working hours and holidays to administrative staff, withdrawal of compensatory off and rationalization of national festival holidays it might consider making a proposal in terms of the order based on Justice Shetty’s report. As a result of negotiations an understanding was reached and a

memorandum of understanding was prepared on 15.05.2010. The Unions had agreed to the proposal of the Management regarding uniform working hours etc and a clause was incorporated in the Memorandum of Understanding to this effect also. However, this clause in the draft was deleted as the Unions did not want it to form part of the long-term settlement. A Section-12(3) settlement was signed without this clause. The Management issued a circular on 24.01.2011 giving effect to the changes proposed. But this was resisted by workmen. On 05.02.2011 the Management issued a notice under Section-9A of the ID Act giving effect to the proposed changes regarding shift timings and paid holidays. The changes were notified also. But the unions sought intervention of the Conciliation Officer and so the changes could not be given effect to. On failure of conciliation the government has referred the dispute regarding the change proposed for increase in working hours. The Government has omitted to include the issue about the change of holidays to the workmen. The three changes proposed by the Management are fully justified and valid in law. The Management may be permitted to give effect to the same.

6. The Union, the opposing party in ID 17/2012 has filed Counter Statement contending as below: the Union is one of the two recognized unions of NLC and has become sole bargaining agent of the workmen with regard to conditions of service. The workmen and employees employed in the mines and thermal power stations which are the production units are given direct incentive called Quarterly Planned Performance Reward at the rate of Rs. 7,200/- per quarter. The workmen and the employees employed in the service units are given semi-direct incentive at the rate of Rs. 5,100/- per quarter. Other workmen and employees other than executives are given incentive at the rate of Rs. 4,735/- per quarter. Originally the workmen and the employees working in the production units were paid overtime wages for reporting earlier and leaving later than the scheduled timings. When the overtime wages was sought to be stopped, compensatory off was allowed to the workers. Three days compensatory off was given to the workmen employed in the operation work in the mines and thermal power stations and two days off was given to the workmen involved in the maintenance work in the mines and thermal power stations. This has to be availed each month. The workmen employed in the mines and thermal power stations, both in operation and maintenance work are enjoying canteen facilities and are getting food items at concessional rates. The workmen and the executives working in areas other than the production units and service units viz. Corporate Office and Administrative Office have been working between 1000 AM and 0500 PM. The Executives are getting performance rated payment at the rate of 5% of the profit. When the Executives working in Corporate and Administrative Office are getting more benefits the non-



executive staff of these offices were not extended similar incentives. The staff working in Corporate and Administrative Office are not given similar canteen facility as available to the workmen and staff employed in the production units. They are not given compensatory offs as given to the workmen and staff employed in the production units. That is why they have been extended with 18 days of national festival and local holidays. The working hours as it exists now was in vogue from the date of inception of the Company. There is no reason or justification for the change in the conditions of service. The working hours of workmen and staff in the production and service units is only 8 hours per day and that also when they are getting more benefits. If the Management wants to increase the working hours all the benefits now payable to the workers in the production and service units shall be made available to the other workmen also. Issues regarding compensatory off and holidays have not been referred for adjudication. The Management cannot insist for such changes unless those issues are also referred for adjudication. The Management is not entitled to implement the proposed changes.

7. ID 18, 20 and 21 of 2012 are also disputes raised by the different unions against the changes proposed by the Management. In all these the Management has filed Claim Statement in tune with the Claim Statement filed in ID 17/2012. The respective unions have filed Counter Statements against these Claim Statements. The contentions in these Counter Statement are in tune with the contentions in the Counter Statement in ID 17/2012.

8. The points to be considered in all the four matters being the same they were tried together treating ID 17/2012 as the main case.

9. The evidence consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W17 and Ext.M1 to Ext.M11.

#### **10. The points for consideration are:**

- (i) Whether there is any justification in the demand of the Management for uniform working hours ?
- (ii) Whether the Management is justified in seeking to reduce the number of holidays for a section of the workmen?
- (iii) Whether the change proposed in respect of shift timings and numbers is justified?
- (iv) What are the reliefs to which the parties are entitled?

#### **Point No. 1**

11. NLC Limited, Neyveli is an establishment with around 18000 employees of which 14000 are workers. It is doing mining operations and is having thermal stations. It is also having workshop for maintenance. The premises

of the Company include a residential colony for the major portion of the employees. There is also the Administrative Offices of the Company at Chennai and other major cities of India.

12. The Company has been following 8 hours work days for most of the sections involving a large number of employees. There were 5 shifts, 3 shifts of 8 hours each in rotation and 2 other shifts also. Even though the workmen in the mines and the factory were working for 8 hours a day, the Administrative, non-factory and non-field staff were working for lesser hours, from the very beginning of the establishment. The case of the Management is that in the absence of uniformity in working hours for all the workmen administrative inconvenience is caused. It is further stated that this discrepancy has resulted in dissatisfaction among a section of the employees also. According to the Management it is on account of this a notice under Section-9A has been issued seeking to bring uniformity in the working hours. The proposal was to re-fix the working hours from 09.00 AM to 05.30 PM. Along with this, the Management also proposed to bring down the number of holidays enjoyed by the same section of Administrative staff. They have reasoned that though all the employees including the administrative staff come under the category of workmen, they alone enjoyed 16 holidays and 2 restricted holidays while the workmen working in the mines and factory establishments enjoyed only 9 holidays i.e. 4 national holidays and 5 festival holidays. Uniformity was sought in this also and this was also included in Section-9A notice. Another fact that was referred to in the notice was uniformity in the matter of observing relay and groups of workmen required to work in the shifts. It is because the different unions objected to the proposal of the Management and raised the dispute before the Labour Commissioner the matter has reached before this Tribunal.

13. There is a contention for the Management that the above proposals of the Management were considered during negotiation when the unions demanded revision of wages based on the Presidential Order consequent to the recommendation of revision of pay and allowances by the committee under the Chairmanship of Justice Jagannatha Rao. According to the Management, they have pointed out to the Unions that only a revision of the quantum of existing allowance and the terms thereof and not a specified percentage of basic wages could be allowed. Even while making this concession, the Management is said to have informed the Unions that this could be granted only if the workmen agree to remove the differences in the matter of working hours to administrative staff, withdrawal of compensatory off and rationalization of National Festival Holidays so as to remove the disparity between the workmen in the administrative office and those in the factories and mines. According to the Management, the issues were discussed as one single package and an

understanding was reached as a result of the negotiation and draft memorandum of understanding was also prepared on 15.05.2010. According to the Management Clause-29.7 was incorporated in the Memorandum of Understanding and this has provided for dispensing with compensatory off without working for extra hour, withdrawal of late punch and grace time and also provided to take steps for implementation of uniform working hours for general shift and offices. It is stated in the Claim Statement that the unions have pleaded with the Management that this clause need not be made part of the settlement as they have already accepted the proposal and accordingly the clause was deleted from the draft. After the settlement was implemented the Management wanted to implement the change of service conditions relating to uniform timings, compensatory off, etc. But the Unions pleaded for time. Later the Management issued a circular giving changes to the effect proposed. This was resisted by the workmen and they approached the High Court. It was thereafter a notice was issued under Section-9A of the ID Act proposing the changes with regard to shift timings and paid holidays. The changes could not be given effect to since the Unions sought the intervention of the Conciliation Officer.

14. The counsel for the Management has advanced an argument that even though the particular clause regarding uniform timings, compensatory off, etc. were deleted from the long-term settlement it could still be implemented since the Unions have already entered into an understanding with the Management regarding this. The counsel for the Management has referred to the decision of the Andhra Pradesh High Court in *AGNIGUNDALA LEAD PROJECT, HINDUSTAN ZINC LTD., AND OTHERS VS. HINDUSTAN ZINC WORKERS UNION AND ANOTHER* reported in 1988 2 LLJ 318 in this respect. Here it was held that a settlement arrived in the course of conciliation or otherwise is binding on the parties. It was a case where the settlement was signed by responsible Officers. In the above case the Management has tried to withdraw from the settlement. The Andhra Pradesh High Court has held that the Officers who signed the settlement had signed with authorization and the settlement is binding.

15. The attempt of the counsel for the Management has been to make out that there was an understanding between the Management and the Unions in this case also. According to the counsel, from the conduct of the parties an agreement of the kind specified by him can be inferred from the documents and circumstances. The counsel for the Management has referred to Ext.M1 the minutes of the Bipartite Committee Meeting held on 02.03.2010 in this respect. He has referred to Page-2 of Ext.M1 under the heading "*Other Issues Discussed*" which mentions about uniform timings, adherence to the timings

and grace time. Page-1 of this document contains the signature of the persons representing Management and persons representing workman. However, Page-2 does not contain any signature. Even assuming that this is part of Page-1, the only assumption that can be made is that the issue of uniform timings and adherence to the timings has been discussed in the committee meeting and not that any understanding or any agreement has been reached on this account. The counsel has also referred to Ext.M2 the minutes of understanding said to have been reached by the Management with the two recognized unions in the matter of wage revision. This contains Clause 29.7 which according to the Management was incorporated based on the understanding between the Management and the Unions in the matter of uniform working hours, etc. However, this document does not contain the signature of anyone, either from the side of the Management or from the side of the workmen. So there is nothing to show that this is actually the minutes of understanding reached between the Management and the Unions and it was accordingly Clause 29.07 was incorporated in the same. In fact MW1 examined on the side of the Management has admitted that the document does not contain the signature of any persons concerned.

16. Another argument that has been advanced by the counsel in support of his case of understanding regarding uniformity of working hours, etc. is that the recognized union who has participated in the discussion has not denied in its Counter Statement the case in the Claim Statement that such an understanding has been reached. However, there is the denial of other unions in their Counter Statements. Even the failure of the union who has participated in the discussion to deny the case of understanding in the Counter Statement will not advance the case of the Management in this respect. On the basis of Ext.M1 and Ext.M2 one can never come to a conclusion that an understanding has been reached in this respect. So the contention that an understanding has been reached between the Management and the Unions regarding the issue involved is to be rejected.

17. Now the question is whether the change in the time can be brought into effect even without a consensus between the Management and the workmen. The Management has issued Section-9A notice on 05.02.2011 and this is marked as Ext.M10. This gives the timings that prevail in different units of the Company. It could be seen from this that even in the same unit timings of four different timings existed. For one Section it is 8.5 hrs, for another Section is 8 hours and for still another Section it is 7 hours only. The Management has proposed that the timings should be the same for different Sections. Though the proposed timing differs, the working hours sought to be introduced is the same for all i.e. 8.5 hours including lunch break.

18. The proposed change is resisted by the different unions who have raised the dispute. Their stand is that so far as the Administrative staff is concerned they were having work hours of 7 hours for almost 50 years starting from the inception of the Company itself. According to them, by such long practice this has become the work time of the Administrative staff even though other sections of workmen work for a longer time. It is also the contention of these unions that the facilities enjoyed by the workmen who are working in the mines and service units are much more than the Administrative staff and so there is no parity in the monetary benefit obtained by them and the Administrative staff and for this reason itself the Administrative staff cannot be asked to work more. It is stated in the Counter Statement in ID 17/2012 that the workmen employed in the mines and the Thermal Power Stations which are called production units are getting Quarterly Plant Performance Reward @ Rs. 7,200/- per quarter and the employees employed in the service units are getting Semi-Direct Incentive at the rate of Rs. 5,100/- per quarter while the other workmen including the Administrative staff other than the Executives are getting only at the rate of Rs. 4,735/- per quarter. It is also stated that the workmen in the production and service units are getting Canteen facility at concessional rate while other staff are not having this concession.

19. It can be seen from the above contention of the Unions itself that the only difference so far as the workmen of production and service units are concerned is the payment made towards Quarterly Plant Performance Reward or the Semi-Direct Incentive award, apart from the concessional canteen facility. It is not denied by the Unions that subsequent to the latest revision of wages all the workmen have obtained 40% of the Basic Pay as allowances. Thus it could be seen that there is no difference in payment of pay and allowances so far as the workmen and staff in the production and service units and other sections are concerned. It could be seen that Quarterly Plant Performance Reward is meant for those workers who are directly involved in the production and is facing occupational hazard, they being engaged for work in production units including mines and power stations. Thus it could be seen that this is the reward payable to them on account of the special nature of their work. At the same time, the workmen on whose behalf the Unions have raised the dispute also are getting incentive not much less than that of what the employees in the service units are getting. So there is no basis for the contention raised that those working in the production and service units are getting much more monetary benefit than that of the Administrative staff. At the same time the Administrative staff is working one hour less than the other workmen. Unification in time is sought in this background.

20. The difficulty experienced because of the difference in the timing of the Administrative staff is evident

from the admission made by WW1, the Vice President of one of the Unions. In the Township Administration office in which WW1 was working, for Technicians and Unskilled Workers the working hours were from 08.30 AM to 05.00 PM. At the same Office, for the employees who attend to cleaning and movement of files working hours were from 09.30 AM to 05.00 PM. For Clerical Staff and Officers the working hours was from 1000 AM to 0500 PM. He also admitted that since the change was implemented among the Officers, from June 2011 the Officers and Managers were observing the working hours of 09.00 AM to 05.30 PM while the Subordinates under them were coming to the office at 09.30 and leaving by 05.00 PM. Since the proposed change could not be implemented so far as the workmen coming under the Administrative staff are concerned the Management had to revert back to the earlier time for Officers and Managers. Certainly, there will be difficulty when different timings are practiced in the same office. This would certainly affect the entire concern as a whole also.

21. It has been argued on behalf of the counsel for the Management that in so far as the Management is not violating any of the provisions of the labour enactments it is within the authority of the Management to fix the timings. The counsel has referred to the dictum laid down by the Apex Court in the decision in OIL AND NATURAL GAS COMMISSION VS. WORKMEN reported in 1973 1 LLJ 18. In this case the identical issue was considered by the Apex Court. When the workshop of ONGC at Baroda was under construction the Administrative staff was using a shed at a distance of about 2 kms. from the workshop. At this time the working hours of the Administrative staff were from 10.00 AM to 05.00 PM with interval of half an hour. After completion of the construction of the workshop the Administrative staff was shifted to the new building and their working hours were fixed from 08.00 AM to 05.00 PM. A dispute was raised against this. The Industrial Tribunal and High Court had favoured the workmen fixing the working hours as 6.5 hours. The Apex Court observed that the question of adverse effect of the reduced working hours of the office staff on production is a relevant fact to be considered. The Apex Court laid down that the Management have full power and discretion in fixing the working hours of the Administrative staff within the limits prescribed by the statute. The Apex Court observed that the view of the Tribunal that reduction in the hours of work of the office staff did not adversely affect the working is not supported by evidence on record but it contrary to fact also. The counsel has also referred to the decision in TRANSPORT AND DOCK WORKERS UNION VS. MUMBAI PORT TRUST AND ANOTHER reported in 2011 2 SCC 575 in this respect. In the Mumbai Port Trust, Typists and Computer Clerks who were appointed after a particular date were to work for 7.5 hours while those who were in service earlier were to work for 6.5 hours only. The

Management was trying to bring uniformity in the working hours by a slow process by enhancing the working hours of the new recruits. A dispute was raised on account of this. Considering this the Apex Court has held that fixing of hours of work, provided they do not violate any statutory provision or statutory rule are really Management functions and the Courts must exercise restraint and not ordinarily interfere with such Management functions. Thus, it could be seen that the Apex Court has been reluctant to interfere in the power of the Management to fix, re-fix or change the working hours in so far as they did not go beyond the provisions of the statute in doing so. In the present case also there is no case for the Unions that the act of the Management is in violation of the provisions of the statute. Their only contention is that the present timing has been in existence for a long time and it has become the time of work and it could not be increased. This has been found against by the Supreme Court. It is in the realm of the Management to decide what should be the working hours and what should be the timing in so far as it does not go beyond the provisions of the statute.

22. The increase in the working hours was made applicable to the Officers of the NLC also. The Officers Association has challenged the change before the High Court of Madras by a Writ Application and this has been dismissed and the order was challenged in Writ Appeal No. 1221/2011. The order in this has been produced and is marked as Ext.M11. In this order the High Court has followed the two decisions of the Apex Court referred to earlier. The Hon'ble High Court has stated that fixation of working hours for the employees is purely within the domain of the Management being taken as a policy decision and the scope of judicial interference with such decisions is very limited. It was further held that when a decision has been taken by the Management regarding the working hours by taking note of the various factors which are within its knowledge and understanding, pattern of work in the concern, the same cannot be interfered unless such decision is shocking the judicial conscience or palpably arbitrary or violative of any of the statutory provisions. Thus the challenge of NLC Officers against the increase in the timings has been turned down by the High Court.

23. The dictum laid down in the above decisions are well applicable to the facts of the present case. WW1 has stated that the Officer's timings have to be reverted to the earlier position in view of the dispute raised by the Unions in the present case. It is very clear that unless the timing of the Administrative staff are also synchronized with the other workmen that of the Officers and others, administration of the Offices would become difficult. It was because of this very reason the timing of the Officers had to be reverted to the old one. It has become impossible for them to start work from the newly fixed time in the absence of the subordinate staff to assist them.

24. The attempt of the Management has been to increase the working hours by 1.5 hours so far as the Administrative staffs are concerned. As seen from the admission of MW1 examined on behalf of the Management the existing working hours of the workers other than Administrative staff was 8 hours including lunch break. Now there is an attempt to increase this by half an hour more by fixing the working hours as 8 hours and half an hour lunch break apart from this. When the practice prevalent among the other workmen itself is 8 hours work time, I do not find any justification in increasing it by half an hour more. The period of 8 hours should include the lunch break of half an hour also. The ideal timing that can be fixed is 09.30 AM to 05.30 PM. The Management can accept this as the time of work.

25. The one facility other workmen other than the Administrative staff are enjoying is the canteen facility at concessional rates. When the Administrative staffs are asked to work one more hour it is only proper that they are also given canteen facility at concessional rates. The point is answered accordingly.

#### **Point No. 2**

26. Though the proposal as per the notice under Section-9A of the ID Act was to bring uniformity in the timings, to reduce the number of holidays and also to have some change in the shift system, the Government has, by the order of reference, referred the dispute regarding the proposal for increase in the working hours only. Though letter was written to the Government to refer the other issues also this was not done. The counsel for the Management has stated that a joint memo has been filed by the Management and the Union agreeing that this Tribunal can consider the issue regarding reduction of holidays as well. In the written argument submitted on behalf of the Unions in ID 17 and 20 of 2012 it is stated that all the issues can be considered on the basis of the memo filed by the Management. However, the memo does not contain the signature of the advocates of any unions. The other unions have not stated whether these issues also can be considered.

27. In any case I do not think the demand of the Management to reduce the number of holidays now enjoyed by the Administrative staff need be allowed. The contention of the Management is that while other workmen are having only 9 holidays, the Administrative staff are enjoying 18 holidays including 2 Restricted Holidays. It is the case of the Management in the Claim Statement that the workmen in the mines and factory establishments were enjoying the special privilege of availing 2/3 days of compensatory off each month. Though it is stated in the Claim Statement that there is no justification for granting of this concession there is no case for the Management that this concession given to the workmen in the mines and factory has been put an end to. That means those



workmen are enjoying compensatory off of 24 days or 36 days as the case may be, annually. There is no such privilege so far as the Administrative staff are concerned. For this reason also I am not inclined to interfere with the privilege of more holidays enjoyed by the Administrative staff. The point is found accordingly.

### **Point No. 3**

28. This issue is said to have been settled between the Management and the Union subsequently. So there is no necessity to consider this point.

### **Point No. 4**

29. In view of my finding on Point No. 1, the following award is passed:

The Management is allowed to fix the working hours as 8 hours and bring uniformity in the time of work.

K.P. PRASANNA KUMARI, Presiding Officer

### **Witnesses Examined:**

For the 1st Party/ : WW1, Sri G. Kuppusamy  
Petitioner Unions

For the 2nd Party/ : MW1, Sri C. Thiagaraju  
Management

### **Documents Marked**

#### **On the Petitioner's side**

Ex.No.	Date	Description
Ex.W1	24.01.2011	Notice of Respondent
Ex.W2	01.02.2011	Order in MP No. 2 of 2011 in WP No. 2412/2011
Ex.W3	03.11.2010	Notice of Respondent
Ex.W4	27.01.2011	Conciliation Notice
Ex.W5	29.01.2011	Petitioner letter to RLC (Central)
Ex.W6	24.01.2011	Notice of Respondent
Ex.W7	31.01.2011	Affidavit in WP No. 2412 of 2010
Ex.W8	02.02.2011	Notice of Respondent withdrawing earlier notice dated 24.01.2011
Ex.W9	18.02.2011	Dispute raised by the petitioner
Ex.W10	26.02.2011	Notice issued by the Respondent
Ex.W11	24.03.2011	Petitioner letter to Respondent
Ex.W12	13.06.2011	Conciliation Proceedings
Ex.W13	05.07.2011	Counter filed by the Respondent before ALC

Ex.W14	05.07.2011	Failure Report
Ex.W15	12.08.2011	Notice of Respondent
Ex.W16	01.12.2011	Order in MP 2 of 2011 in WP 19212 of 2011
Ex.W17	18.04.2012	Order in WA No. 1666 of 2011 and batch

#### **On the Management's side**

Ex.No.	Date	Description
Ex.M1	02.03.2010	Minutes of the Bipartite held on wage revision and parties representing the hearing
Ex.M2	5/2010	Draft minutes of understanding reached between NLC Ltd. and (I) NLC Worker's Progressive Union (LPF) (ii) NLC Pattali Thozhilalar Sangam (PTS) representing Workmen
Ex.M3	06.07.2010	Memorandum of Understanding reached between the Management of NLC and NLC Workers' Progressive Union (LPF) and NLC Pattali Thozhilalar Sangam (PTS) on wage revision for unionized category of workmen
Ex.M4	04.09.2010	Statement u/s 12(3) of ID Act (covering 01.01.2007 to 31.12.2011)
Ex.M5	29.06.2001	Settlement u/s 12(3) of ID Act (covering 01.01.1997 to 31.12.2006)
Ex.M6	26.08.1995	Settlement u/s 12(3) of ID Act (covering 01.01.1992 to 31.12.1996)
Ex.M7	03.11.1989	Settlement u/s 12(3) of ID Act (covering 01.09.1986 to 31.12.1991)
Ex.M8	10.10.1983	Settlement u/s 12(3) of ID Act (covering 01.01.1982 to 31.08.1986)
Ex.M9	-	Comparative Statement of allowances of NLC employees before and after wage revision from 01.01.2007
Ex.M10	05.02.2011	Notice under Sec.9A of ID Act – Form E – with two Annexures and two list of holidays dated 03.11.2010
Ex.M11	13.11.2013	Order of Hon'ble High Court of Madras in WA No. 1221 and MP No. 1 of 2011 – in NLC Officer's Association Vs. Government of India, Ministry of Coal, New Delhi and NLC Ltd., Neyveli.

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 431.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस. ई. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 206/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22012/312/1994-आईआर (सी-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 431.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 206/94) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Kurda Sub Area of SECL, and their workmen, received by the Central Government on 25/02/2015.

[No. L-22012/312/1994 - IR(C-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/206/94**

Secretary,  
Indian Black Diamond Workers Federation,  
Post Bistrampur colliery,  
Distt. Surguja (MP)

Workman/Union

Versus

Sub Area Manager,  
Kurda sub Area, SECL,  
Post Bistrampur Colliery,  
Distt. Surguja (MP)

Management

#### AWARD

Passed on this 6th day of February 2015

1. As per letter dated 14-11-94 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/312/94-IR(C-II). The dispute under reference relates to:

“whether the action of the Sub Area Manager, Kurda Sub Area of SECL, Bistrampur Area in terminating services of Shri Lal Sai S/o Shri Rameshwar Cat-I Mazdoor

Balarampur mines w.e.f. August 92 is legal and justified? To what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary of Workers Federation at 2/1 to 2/7. Case of workman is that he was employed on post of Category I mazdoor in IInd party Mine against permanent vacant post as regular employee. The service conditions of employees are covered by various settlements at NCWA, standing orders. Workman is illiterate and claims ignorance about service conditions. His services were disposed in August 1992 without assigning reasons. No chargesheet was issued to him. DE was not conducted. His repeated request to the management to allow him to join duty was not considered. Union took up the matter and raised dispute. The dispute is referred after failure report submitted by ALC. It is reiterated that when he repeatedly approached Mine Manager, it was disclosed that his services were terminated in August 1992 for unauthorized absence without holding enquiry. That workman had not received chargesheet or notice to enquiry. Workman was permanent employee. His services could not be terminated without reasons. Termination of his service is in violation of Section 25-F, g, G, H of ID act. Section 25-H of ID Act not complied. Termination of his service is illegal and management acted in colourable exercise of powers. On such ground, workman prays for reinstatement with back wages.

3. IInd party submitted Written Statement at Page 5/ 1 to 5/3 opposing claim of workman. It is submitted that SECL is registered company operating many collieries in MP including Kurda Sub Area. Ist party workman was working as Category I General Mazdoor. Chargesheet was issued to him for long unauthorized absence. Workman submitted reply to chargesheet. It was not found satisfactory. Enquiry Committee was constituted. Workman participated in Enquiry Proceedings. He accepted charges against him. Workman was given full opportunity for his defence. Principles of natural justice were followed. Charge of unauthorized absence against workman was proved as per report submitted by Enquiry Officer. Management submits that for proved charge of unauthorized absence, workman was dismissed from service. His termination is legal. Claim of workman cannot be accepted.

4. As per order dated 13-10-14, enquiry conducted against workman is found proper and legal. Considering pleadings on record and orders on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                |
|--|----------------|
| (i) Whether the action of the Sub Area Manager, Kurda Sub Area of SECL, Bistrampur Area in terminating services of Shri Lal Sai S/o Shri Rameshwar Cat-I Mazdoor Balarampur mines w.e.f. August 92 is legal and justified? | In Affirmative |
|--|----------------|

- (ii) If not, what relief the workman is entitled to?" Workman is not entitled to any relief.

### REASONS

5. As per order dated 13-10-2014, enquiry conducted against workman is found proper and legal. Rather I may say that workman had failed to participate in reference proceeding as no evidence was adduced to substantiate his contentions. Considering the record of enquiry, it was held that enquiry was legal and proper. Workman has not participated in reference proceeding. No evidence is adduced on his behalf. The record of Enquiry Proceedings is produced by management Exhibit M-1. Workman has admitted charge of unauthorized absence from 8-2-92. Thus charge against workman is proved by his admission. Workman has not participated in reference proceeding. No evidence is adduced on his behalf. For above reasons, I record my finding in Point No.1 in Affirmative.

6. In the result, award is passed as under:-

- (1) The the action of the Sub Area Manager, Kurda Sub Area of SECL, Bistrampur Area in terminating services of Shri Lal Sai S/o Shri Rameshwar Cat-I Mazdoor Balarampur mines w.e.f. August 92 is legal and proper.
- (2) Workman is not entitled to any relief.

R.B.PATLE, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 432.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी. एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 32/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22012/6/2010-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 432.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 25/02/2015.

[No. L-22012/6/2010-IR(CM-II)]

Md. ZAHID SHARIF, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/32/2010

General Secretary,  
Samyukta Koyla Mazdoor Sangh (AITUC),  
CRP Camp, Iklehra,  
Chhindwara

Workman/Union

Versus

Chief General Manager,  
WCL, Pench Area,  
PO Parasia,  
Chhindwara

Management

### AWARD

Passed on this 4th day of February 2015

1. As per letter dated 27-4-10 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-22012/6/2010-IR(CM-II). The dispute under reference relates to:

“Whether the action of the management of M/S WCL in dismissing Shri Puran from services w.e.f. 30-1-09 is legal and justified? To what relief is the claimant workman entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim through General Secretary, SKMS Union. Case of Ist party is that he was working as Trammer with IInd party for 15 years. Chargesheet was issued to him on 27-1-07. Reply filed by workman was found not satisfactory. Management decided to conduct enquiry. Enquiry was adjourned on various dates. On 25-7-07, workman was present in Enquiry Proceedings. The management's representative produced his evidence consisting 22 pages. Workman was directed to produce his evidence. Workman had submitted that he was granted bail. He was not desiring to adduce evidence. Workman further reiterates that his services were terminated in violation of natural justice. The workman released on bail was not considered. Termination of service of workman is illegal. Workman prayed for reinstatement with consequential benefits.

3. Management filed Written Statement denying claim of workman. Management submits that chargesheet was issued to workman as per clause 26.8 of standing orders. Shri O.P.Fulare was appointed Enquiry Officer. Shri Benjamin Demello Sr. Mining Engineer was appointed as Management's Representative. on request of workman, enquiry was adjourned to 30-6-07, 4-7-07, 11-7-07, 14-7-07 & 25-7-07. Workman and his co-worker remained absent.

Workman had requested to engage Sanjay Singh as his co-worker. Management's representative had produced copy of judgment passed by 3rd Addnl. Judge, Chhindwara in Criminal Case 148/01. Workman was convicted for offence under Section 302 of IPC. Enquiry Officer submitted his report. Considering the report, workman was dismissed from service. IInd party reiterate that after report of Enquiry Officer, charges against workman are proved. He was dismissed from service.

4. The matter was fixed for evidence of workman. Union Representative submits that workman is not inclined to adduce evidence. He is not desiring to prosecute his claim under reference. Management also submitted application not to adduce evidence in the matter.

5. Both parties did not effectively participate in the reference, no evidence is adduced in the case to substantiate their contentions in the matter. The dispute under reference could not be adjudicated for lack of participation by the parties. Therefore No Dispute Award is passed in the matter.

R.B.PATLE, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 433.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी. पी. डब्ल्यू. डी. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, नई दिल्ली के पंचाट (संदर्भ संख्या 38/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-42012/87/2005-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 433.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/2006) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 2, New Delhi as shown in the Annexure, in the industrial dispute between the management of CPWD, and their workmen, received by the Central Government on 25/02/2015.

[No. L-42012/87/2005 - IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT - II, KARKARDOOMA COURT COMPLEX, DELHI

Present:- Shri Harbansh Kumar Saxena

ID No. 38/2006

Shri Mukesh Kumar & 116 others

As represented by General Secretary

CPWD Mazdoor Union

New Delhi-110011

.....Workmen

Versus

The Director General of Works

Central Public Works Department

Nirman Bhawan

New Delhi-110011

.....Management

#### AWARD

The Central Government in the Ministry of Labour vide notification No. L-42012/87/2005-IR(CM-II) dated 12.06.2006 referred the following Industrial Dispute to this Tribunal for adjudication:-

“Whether the action of the management of CPWD, New Delhi in not regularization the workmen, Sh. Mukesh Kumar & 116 others and not paying the wages as per the notification dated 31.07.2002 is legal and justified? If not, to what relief the workmen is entitled to?”

On 07.07.2006 reference was received in this Tribunal. Which was register as I.D No. 38/06 and claimants were called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Claimants/workmen on 18.10.2006 filed Claim Statement. Wherein they prayed as follows:—

- Award regularization and also the wages in the minimum of time scale plus all allowances from the date of their initial employment as indicated to against each of the workmen.
- Award any other relief as this Hon'ble Tribunal may kindly think fit and proper in the interest of justice.

Against claim statement management filed written statement on 16.06.2008 through which he denied the contents of claim statement and prayer for dismissal of claim statement.

Against which workmen filed rejoinder on 6.10.2008. Through which they reaffirmed the contents of claim statement.

My. Ld. Predecessor on 6.10.2008 passed an order on order sheet which shows that after filing rejoinder by workmen he fixed 24.10.2008 for workmen evidence which is in itself indicates that he proceeded further on the basis of question of determination mentioned in schedule of reference and my Ld. Predecessor treated question of determination as issues in the instant case.



Workmen in support of their case filed affidavit of WW1 Sh. Joginder Singh on 9.01.2012.

Who tendered his affidavit on 8.1.2013. He was partly cross-examined same day.

His statement of tendering of affidavit and partly cross-examination is as follows:—

I tender in evidence my affidavit by way of examination –in-chief. It is signed by me at points A and B is correct. The same is Ex. WW1/A. It be read as part of my statement.

XXXXX :— By Ld. A/R for the management.

I have not brought the resolution vide which I was authorized on behalf of all the workmen to represent them in this case and to make a statement in the court. I can produce the same. (Let the witness bring this document on the next date of hearing).

He was also cross-examined on 26.6.2013.

His cross-examination is as follows:-

XXXXX :— By Ld. A/R for the management.

I had not filed copy of my appointment letter as well as appointment letters of other claimants. Vol. the contractor had not issued any appointment letter either in my favour or in favour of the other claimants. No payment record, in respect of the claimants, is available with me. It is incorrect that the claimants were working under control and supervision of the contractor and not under the control and supervision of the officers of the management. I cannot name the contractor under whom the claimants were working. I would produce resolution, which authorized me to depose facts on behalf of the claimants, on the next date. At the request of the witness, his further cross-examination is deferred.

He was further cross-examined on 13.12.2013.

His further cross-examination is as follows:—

Q. Whether espousal /sponship closed 20.04.2003 is not resolution to file?

A. It is resolution.

It is wrong to suggest that I was not authorize to represent the case 116 claimants vide this espousal / sponship dated 20.04.2003.

Q. Whether you have filed any appointment letter on behalf of 116 workmen in the court record.

A. Yes, it is on the record.

The witness has been shown to the court to show the appointment letter.

It is incorrect to suggest that paper attached alongwith reference are no appointment letter if workmen.

It is incorrect that no stamp of CPWD is affixed on any paper of the list attached with the reference.

Q. M. Nagaraju, used to work under which ex-engineer or Asst. Engineer ?

A. After seeing his record witness says that workmen used to work under Elect Engineer, Raja Mundri.

Q. Can you tell that whether you have place on record any document (record that this workman, Nagaraju used to work under said Ex. Engineer?

A. I have already filed.

Q. Whether you have filed any record relating to attendance of workmen.

A. Yes.

It is incorrect to suggest that no such record has been filed by me.

It is correct that I have not filed salary slip of the workmen. It is wrong to suggest that direct relationship with the management of CPWD. It is correct that wages were paid by contractor to the workmen. It is wrong to suggest that workmen is not entitled to any relief from management. I have not filed any service book of any workmen because workmen was not provided with service. I cannot say whether any workmen was medically examined and his character was verified from police.

It is wrong to suggest that workmen cannot claim to be direct employee of management. It is also incorrect to suggest that I have filed false and frivolous affidavit and I am deposing falsely.

His cross examination is concluded on 13.12.13.

Thereafter workman closed his evidence.

Management in support of its case filed affidavit of Sh. O.P. Sharma, Executive Engineer who tendered his affidavit on 13.3.2014. He was cross-examined on same day.

His statement of tendering of affidavit and cross-examination is as follows:-

I tender in evidence my affidavit Ex. MW1/A which bears my signature at point 'A' and 'B'

XXXXX. by Sh. B.K. Prasad, Ld. A/R for the workman.

I have been authorized by Dept. to file affidavit in Evidence on behalf of the management. I have no idea whether in conciliation proceeding any person on behalf of department appeared or not. I cannot say. Whether same Industrial Dispute has been sent by Labour Ministry to this Tribunal for Industrial Adjudication. It is incorrect to suggest that contents of Affidavit regarding rejection of claim are false and frivolous.

Question:- Whether you are aware of the names of the workers designations, divisions posting are mentioned in the Annexure of reference order?

Ans. Annexure is on record.

Q-whether management got registration for employee Contract Labour from the Ministry of Labour as required under the provision of Contract Labour (Regulation and Abolition Act)?

A. Contractor was registered to get it registered.

It is incorrect to suggest that management is duty bound to get it registered.

Q. Have you seen the licence taken by contractor from the Ministry of Labour before employing the contract labour?

A.No.

Q. Whether contents of para 17 of W.S. are correct?

A. Yes.

Q. Whether the regular worker in work charge category were getting all the benefits like pay scale etc.

A. Yes

Q. Whether the contract labour got such facilities from its contractors?

A. I cannot say.

Q. Whether payment made to contract labour by the contractor is to be certified by representatives of CPWD?

A. Yes.

Q. Have you seen notification of abolition dated 31-07-2002 u/sub-section 2 of Section 10 Contract Labour Regulation act (Regulation & Abolition Act) circulated by office of Director General (Works) vide their office memorandum dated 27-12-2002 Exh. WW1/3?

A. I have seen it now. It is correct that Contract Labour works at places where work is going on (i.e. on work sites)

Q. Whether the sites are under control of CPWD?

A. Yes

It is incorrect to suggest that the employment of contract labour is sham, comafledge and illegal.

It is also incorrect to suggest that the Management is adopting unfair labour practice.

It is also incorrect to suggest that I am giving false evidence.

His cross examination is concluded on 13.3.2014.

Thereafter workman closed his evidence.

**Thereafter Ld. A/R for the workmen filed written argument on behalf of workmen Sh. Mukesh & 116 others workmen.**

**Wherein they stated as follows:—**

Respectfully Showeth:

1. That the appropriate Government in the Ministry of Labour, Government of India, New Delhi has referred the dispute to this Hon'ble Tribunal for adjudication vide its order No. L-42012/87/2005-IR(CM-II) dated 12.06.06 with the following terms :

#### **SCHEDULE**

'Whether the action of the management of CPWD, New Delhi in not regularizing the workmen, Shri Mukesh Kumar & 116 others and not paying the wages as per the notification dated 31-07-2012 is legal & justified?' If not, to what relief the workman is entitled to?.'

The corrigendum dated 10th July, 2006 was issued by the Ministry of Labour for the list of 117 workmen as it was not attached earlier.

2. That the details of workmen i.e. Name, Father's name, Designation, Status, Date of Employment, Duty Place and name of the contractor etc. are mentioned in the list attached with the reference and their names etc. were mentioned in para 3 of the Statement of Claim also.

3. That 117 workmen connected with the dispute were engaged through the contractors on a perennial nature of job with a view to exploit these workforce, deny the regular status and equal pay for equal work. They have been performing their duties under the officials of the management of CPWD like Junior Engineers, Assistant Engineers and Executive Engineer concerned as the case may be and the contractors have/had been performing the duties of a Cashier.

4. That the workmen have completed more than 240 days of continuous service in each of the calendar year so they acquire the status of a regular workman of the management of CPWD.

5. That the contractors neither has license for engagement of contract labourers nor the management of CPWD being principal employer procured registration as required under the Contract Labour (Regulation and Abolition) Act, 1970 to engage contract labourers through Contractor (s) thereby violated the provisions of the said Act. So the workmen are entitled regular status and absorbed being direct employees of the management of CPWD, so get all benefits as that of regular and daily rated workmen directly employed by CPWD. It is also submitted that there was no genuine contract. Hence the workmen on completion of 240 days are entitled to be absorbed with the Management of CPWD.

6. That the workmen are performing the duty on a perennial nature of job so all are direct employees of the Management, if the veil is lifted by this Hon'ble Tribunal will come to know how the Management of CPWD is committing unfair labour practice and run counter to the provisions of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, they may be absorbed being direct employees of Management.

7. That all the workmen who are working as unskilled, semi-skilled, skilled etc. workmen connected with the dispute are having the technical qualifications for regularization of their service under the management of CPWD and for other workman working on unskilled category are entitled for their regularization without any technical qualification as both type of categories have also acquire sufficient experience for working in the different categories i.e. unskilled, semi-skilled, and skilled with the management of CPWD.

8. That even the Ministry of Labour in exercise of powers conferred by Sub-section (1) of Section 10 read with Section 2(k) of Industrial Disputes Act so the Industrial Dispute means any dispute and difference between the employers and employers or between employers and workmen or workmen and workmen and the Union has raised to dispute on behalf of workman. Accordingly, CPWD Mazdoor Union raised the dispute of the workman before the Conciliation Officer and after reference before this Hon'ble Tribunal also filed the Statement of Claim as provided u/s 4 (b) of Industrial Disputes (Central ) Rules 1977 in which either President and Secretary of a Trade Union of the workmen or by 5 representatives of the workmen duly authorized in this behalf. It is submitted that the Ld. Presiding Officer vide its order in proceeding dated 12-07-2010 only allow to adduce evidence of two witnesses i.e. Sh. Bhoop Singh on behalf of Union and Sh. Manish and thereafter due to non-availability of Sh. Bhoop Singh, the Ld. Presiding Officer allowed to replace Sh. Joginder Singh as Union witness dated 8-9-2011 and Sh. Joginder Singh adduce his evidence on behalf of the workmen representing the Trade Union i.e. CPWD Mazdoor Union as WW1 and another worker Sh. Manish WW/2 adduce his evidence as workman. It is also submitted that the statement of claim filed by all the workmen through CPWD Mazdoor Union and as common dispute. The Hon'ble High Court of Delhi in Writ Petition (C) No. 18559/2004 titled 'Shakeel Ahmed Vs. New Delhi Municipal Council' has held that the evidence of co-workmen are sufficient evidence and it was not necessary for the petitioner to separately file another affidavit to show that he was also pressing his claim under the reference. The operative para of the judgement dated 22nd August, 2006 is reproduce as under:

“As such, the error in the award vis-a-vis the petitioner is patent.

Reference is made to the judgment 2005(2) SCC 217 at p. 222 to plead that no delegation can be made to appear as a witness and that whether the contested is a question of fact. I have carefully gone through the pleas raised by the respondent. The fact that the workman pressed his claim is very clear from the common statement of claim as well as common conduct of the proceedings and common representation before the Labour Court.

In view of this patent error in the impugned order dated 16-11-2004 and award dated 28-02-2004 are patent to perverse as it is more than evident that the present petitioner also contested/preferred his claim as well as Shri Ramakant Rai did. Since there is no distinguishing feature in the case of the present petitioner and that of Ramakant Rai, there is no way how the present petitioner's claim can be decided differently from that of Ramakant Rai.

The present writ petition is accordingly allowed and it is held that the benefits given to Ramakant Rai in the main award dated 28-02-2004 be given to the present petitioner Shakeel Ahmed.”

9. That the Central Government, in consultation with the Central Advisory Contract Labour Board, prohibited the employment of the contract labour in the process, operation or work specified in the Schedule, in the office / establishment of Central Public Works Department, Ministry of Urban Development and Employment, New Delhi and the Notification for prohibiting the employment of Air Conditioner Mechanic, Air conditioner Khalasi/Helper, Electrician, Wireman, Carpenter, Mason, Fitter, Plumber, Helper, Mechanic, Sewerman, Sweeper, Khalasi, Foreman etc. were notified by the Ministry of Labour Notification dated 31.07.2002 in the Extra-Ordinary Gazette of the Govt. of India in Para II Section 3 and Sub-Section (2). Copy of the notification is annexed as Annexure-III with the statement of claim and the same is exhibit WW1/1.

10. That as per notification dated 31.07.02 of Ministry of Labour, New Delhi the employment on the following work of the establishments are prohibited for employing the contract labour in the office / establishment of C.P.W.D. w.e.f. 31.07.2002 i.e. is the date of publication namely:

- i. Air Conditioner Mechanic
- ii. Air Conditioner Khalasi/Helper
- iii. Electrician
- iv. Wireman
- v. Khalasi (Electrical)
- vi. Carpenter
- vii. Mason
- viii. Fitter

- ix. Plumber
- x. Helper/Beldar
- xi. Mechanic
- xii. Sewerman
- xiii. Sweeper
- xiv. Foreman

11. That it is proved by the evidence of Shri Joginder Singh WW1/A that the work on which the workmen have been performing their duties can not be handed over to the contractors, so they have to be treated the direct employment of CPWD and their status are of a daily rated worker directly employed by the management. Shri Joginder Singh appeared as witness being the office bearer of CPWD Mazdoor Union as the reference is related to Section 10 of I.D. Act and the Union can raise the dispute on behalf of the workman. Shri Joginder Singh WW1 in his cross-examination dated 26-06-2013 the workman mentioned in the schedule employment alongwith the list of workman in which the date, name of contractor etc. are already mentioned. It is functioning of the Government departments no appointment letter and termination letters were given to the workmen working on daily wages or through fake contractor. The extract of the cross-examination is reproduced as under :

“I had not filed copy of my appointment letter as well as appointment letters of other claimants. Vol. the contractor had not issued any appointment letter either in my favour or in favour of the other claimants. No payment record, in respect of the claimants, is available with me. It is incorrect that the claimants were working under control and supervision of the contractor and not under the control and supervision of the officers of the management. I cannot name the contractor under whom the claimants were working. I would produce resolution, which authorized me to depose facts on behalf of the claimants, on the next date. At the request of the witnesses, his further cross-examination is deferred.

Presiding Officer

Again Sh. Joginder Singh appeared on 13-12-2013 and filed the sponsorship/espousal which is exhibit WW4 and concluded his evidence. Sh. Manish WW1 as his name is appearing at Sl. No. 18 in the list referred by the Ministry of Labour and he appeared also on behalf of other workers in a common statement of claim and reference order.

12. Shri O.P. Sharma, Executive Engineer appeared as Management witness WW1 in a cross-examination he admitted that the payments were made to the workman in presence of representative of CPWD. He also admitted that the contract labour works at places where work is going on i.e. on work site. He further admitted that the

work sites are under the control of CPWD. The cross examination by the A.R. of the workman is reproduced as under:

“XXXXXX:- By Sh. B.K. Prasad, Ld.A/R for the workmen.

I have been authorized by Deptt. to file affidavit in evidence on behalf of the management. I have no idea whether in conciliation proceeding any person on behalf of department approved or not. I cannot say. Whether some Industrial Dispute has been sent by Labour Ministry of this Tribunal for Industrial adjudication. It is incorrect to suggest that contents of affidavit regarding rejection for claim are false and frivolous.

Q. Whether you are aware of the name of the workers, designation, divisions postings are mentioned in the Annexure of reference order?

A. Annexure is on record.

Q. whether Management got registration for employee contract labour from the Ministry of Labour as required under the provision of contract labour(Regulation & Abolition) Act?

A. Contractor was required to get it registered. It is incorrect to suggest that the Management is duty bound to get it registered ?

Q. Have you seen the license taken by contractor from the Ministry of Labour before employing the contract labour?

A. No.

Q. Whether contents of para 17 of WS are correct?

A. Yes

Q. Whether the regular worker in work charge category were getting all the benefits like pay scale etc.

A. Yes

Q. Whether the contract labour got such facilities from its contractors?

A. I cannot say.

Q. Whether payment made to contract labour by the contractor is to be certified by representatives of CPWD?

A. Yes.

Q. Have you seen notification of abolition dated 31-07-2002 u/sub-section 2 of Section 10 Contract Labour Regulation act (Regulation & Abolition Act) circulated by office of Director General (Works) vide their office memorandum dated 27-12-2002 Exh. WW1/3?

A. I have seen it now. It is correct that Contract Labour works at places where work is going on (i.e. on work sites)



Q. Whether the sites are under control of CPWD?

A. Yes

It is incorrect to suggest that the employment of contract labour is sham, comafledge and illegal.

It is also incorrect to suggest that the Management is adopting unfair labour practice.

It is also incorrect to suggest that I am giving false evidence.

(MW has admitted in cross-examination the para 17 of written statement so the said para is reproduced which prove that even daily rated workers have been getting the equal pay for equal work i.e. time scale with all allowances except increment.

“It is denied that after the said notification, all the workmen who are covered in employment as referred therein were to be treated as direct employment of management of CPWD. The said gazette notification only abolishes employment of contract labour and not directed the management of CPWD to treat such labourers under direct employment. Equal pay for equal work was notified only for daily rated workers/muster roll workers who were the directly employed workers by the department.”

13. That after the said Notification the workmen connected with the dispute who are covered in employment as referred herein above were to be treated as direct employee of the management of CPWD and their status is of a daily rated workers directly employed by the management. Copy of the order in respect of payment of equal pay for equal work by the CPWD are already annexed as Annexure-I & II with the statement of claim and the same are exhibit WW1/2 and WW1/3 respectively. The copy of sponsorship also exhibit as WW2/4.

14. That the duties have been performed by the workmen are of perennial in nature and the said jobs cannot be awarded on contract basis through Contractor.

15. That Shri Joginder Singh WW1 adduces his evidence and affirm the statement on behalf of workman and also the documents Exhibit WW1/1, WW1/2 & WW1/3. Another witness Sh. Manish S/o Late Sh. Anand Swaroop also adduced his evidence as he himself connected with the dispute and taken the same stand as mentioned in the Statement of Claim and for engagement of Contract Labour and the activities of the management proves that Contract is sham and coma fledge to deny the regularization of the workmen connected with the dispute and the so called contract is also coma fledged being perennial nature of work. The workmen have been performing their duties for the last number of years. The Management also denying equal pay for equal work w.e.f. the date of initial employment so the workman has to be treated as Direct Employee while setting aside the unfair

Labour Practice as the Contract was Sham & Comafledge. Other witness relied the documents as Exhibit WW1/1, WW1/2 & WW1/3.

It is also submitted that the service benefits of regular employees and also daily rated workmen employed directly by CPWD has not been extended to these workmen being the Contract Labour and on this Ground also the work of Contract is Sham & Coma fledge.

In the claim statement it was categorically stated that in this case the Contract was Sham, Coma fledge and illegal as well as unjustified.

16. That in the CPWD, the daily-rated workers in all the categories have been getting their wages in minimum of time scale plus DA, ADA, HRA, CCA, IR except increment but the workman connected with the dispute are even denied minimum wages fixed under the Minimum Wages Act, 1948 from time to time by the appropriate Government to the different categories. Now these workers are also entitled to the same wages paid to the daily rated workers in CPWD i.e. fixed in the minimum of time scale along with all allowances accept increment from the date of their initial employment being unskilled, semi-skilled, skilled and highly skilled workmen. Copy of the order dated 21-10-90 and 28-01-91 are annexed as Annexure 1 & 2 with the statement of claim and the same is exhibit WW1/2 and WW1/3 respectively.

17. That the following time scale fixed to the different categories working in the CPWD as regular workman on work charged establishment:

Status	Time scale Prior to 01.01.1996 with all allowances	Time Scale Fixed w.e.f. 01.01.1996 with all allowances
Skilled	950-1500	3050-4590
Semi Skilled	810-1150	2650-4000
Unskilled	750-940	2550-3200

18. That the daily rated workman on muster roll/hand receipt have been getting their wages in the minimum of time scale i.e. Rs.950/-, 3050/-, 810/-, 2650/-, 750/- and 2550/-, 3200/- along with all allowances accept increment till their services will be regularized but these workmen connected with the dispute are even denied the minimum wages fixed for unskilled, semi skilled or skilled.

19. That the workmen witnesses have affirmed that the CPWD did not got the Registration and the Contractors were also not having any License to employee the Contract Labours under their establishment.

20. That the judgment of Constitutional Bench of the Hon'ble Supreme Court of India, in the matter of Steel Authority of India & Ors. Vs. National Union Waterfront workers & Ors (2001) 7 SCC. The relevant paras of the

judgment i.e. 125(5) and (6) settled the dispute between the principal employer and the contract labour who was employed in a camouflage manner and treated the direct employee of the principal employer, and the same is reproduced as under :

“125(5) On issuance of prohibition notification under Section 10(1) of the CLRS Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contract has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the service of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

“6. If the contract is found to be genuine and prohibition notification under section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall preference to the erstwhile contract labour, if otherwise found suitable and if necessary by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualification”.

21. That the workmen also produce the following judgments in support of their claim :

i) That in SAIL(2001) 7 SCC also affirm the judgment of Hon'ble Supreme Court in Hussainbhai Vs. Alath Factory Thezhilali Union (1987) II-LLJ 397 and Indian Petrochemicals Corporation Ltd. and another, Appellants Vs. Shramik Sena and others and observed in para 71 as under:

“71. By definition the term “contract labour” is a species of workmen. A workman shall be so deemed when he is hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workman may be hired (1) in an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or (2) in

connection with the work of an establishment by the principle employer through a contractor or by a contractor with or without the knowledge of the principal employer. Where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, he merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the work of an establishment by a contractor, either because he has undertaken to produce a given result for the establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage as in Hussainbhai case and in Indian Petrochemicals Corporation case etc. if the answer is in the affirmative the workman will be in fact an employee of the principal employer, but if the answer is in the negative, the workman will be a contract labour”.

22. That it is matter of record that the contractors in this case is only supplying the labour for performing the work of principal employer i.e. CPWD within their premises and as per the judgment of the Hussainbhai Calicut Vs. Alath Factory Thozhilai Union (1978) II-LLJ397, the workmen have to be treated as the direct employees of the SAIL. Relevant portion of the judgment is as under :

“5. The true test may, with brevity be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is in fact the employer. He has economic control over the workers, subsistence, skill and contained employment. If he for any reason chokes off the worker is, virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contract is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, we discern the naked truth through draped in different perfect paper arrangement that the real employment is the Management not the immediate contractor. Myriad devices half hidden in fold after fold of legal form depending on the degree of concealment needed the type of industry, the local conditions and the like maybe resorted to when labour legislation casts welfare obligations on the real employer, based on Arts 38,39,42,43 and 43A of the Constitution. The Court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.

6. If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an

enterprise, the absence of direct relationship or the presence of dubious intermediaries or the make-believe trapping of detachment from the management cannot map the real life bond. The story may vary but the inference defies in genuity. The liability cannot be shaken off.

7. Of course, if there is total disassociation in fact between the disowning management and the aggrieved workmen the employment is, in substance and in real-life terms by another. The management's adventitious connections cannot ripen into real employment"

23. That the workman witnesses have admitted in their Affidavits that the workmen have been performing their job owned by the CPWD in their premises and log book supervised by the Junior Engineer who checks the log book and installation of Generator where the workman performing his duty as Generator Operator. The Hon'ble Supreme Court in the matter titled M/s Bharat Heavy Electrical Ltd.....Appellant Vs. State of U.P. & anothers .....Respondents reported in 2003 LAB I.C. 2630 has held that the test of control-Gardeners engaged through contractor-Looking after lawns and parks inside factory premises, campus and residential colony of company. Their work supervised by employer of company-Attendance recorded by an other employee of company-Concurrent finding by Labour Court and High Court that gardeners were under direct control and supervision of company and were employees of company-Not liable to be interfered with-Fact that work of gardener is not integral part of industry of company-Does not make them any the less employees of company when they were employed with company to work in its premises-Non-filing of attendance register by company also supports the concurrent finding recorded by Labour Court and High Court-Termination of Services of gardeners in violation of S.6N-Company liable to pay compensation and re-employ them. Hussainbhai V. Alath Factory, 1978 Lab IC 1264: AIR 1978 SC 1410. Neither dissented nor diluted in Steel Authority of India Vs. National Union Water Front, 2001 Lab IC 3653 AIR SCW 3574 AIR 2001 SC 3527.

In view of the above judgment the workmen connected with the dispute has been performing their duty under the supervision, control and within the premises of the Management so the contract is a sham, coma fledged and unjust to deny the benefits of a regular and permanent workman under the establishment of CPWD. It is also submitted that the contract system was abolished by the Ministry of Labour during they have been performing their duties as the following works prohibited for employing the Contract Labour in the Establishment of CPWD w.e.f. 31-07-2002 i.e. the date of the Publication namely : Air Conditioner Mechanic, Air Conditioner Khalasi/Helper, Electrician, Wireman, Khalasi(Electrical), Carpenter,

Mason, Fitter, Plumber, Helper/Beldar, Mechanic, Sewerman, Sweeper, Foreman.

24. The Hon'ble Supreme Court in case of Indian Petrochemicals Corporation Ltd. Vs. Shramik Sena and others 1999Lab. I.C.3078 have decided that when the contract labour is treated direct employees of the management for all purposes and the regularization was granted by the court not as a matter of right of the workmen arising under any status but with a view to eradicate unfair labour practice and inequity to undo any social justice and a measure of labour welfare. Operative portion of the said judgment is reproduce as under :

"29. In this appeal, the workmen have questioned the conditions that have been imposed by the High Court while directing regularization of the workmen. They contend that once the Court comes to the conclusion that the workmen are in fact the employees of the management, there is no occasion to impose their condition. We are unable to agree with this argument. It should be borne in mind that the initial appointments of their workmen are not in accordance with rules covering the appointments or the established policy of recruitment of the management. The said recruitment could also be in contravention of the various statutory orders including the reservation policy. Further the respondent is an instrumentality of the State and has an obligation to conform to the requirements of Article 14 and 16 of the Constitution. In spite of the same the services of the workmen are being regularized by the Court not as a matter of right of the workmen arising under any status but with a view of to eradicate unfair labour practices and in equity to undo social injustice and as a measure of labour welfare. Therefore, it is necessary that in the process suitable guidelines or conditions be laid down at the time of Courts issuing directions to regularize the services of the workmen so concerned depending upon the facts of each case. The Court has consistently followed this practice in the earlier cases of regularization and we do not find any reason to differ from the same. For the aforesaid reasons, this appeal also fails and the same is dismissed but with costs".

25. That it proved by the evidence that one of the major conditions for employment of contract labour i.e. registration by the principal employer i.e. CPWD is lacking and even the contractors are not having license for supplying the contract labour, so the contract system was not the genuine contract and the workmen connected with the dispute have to be treated as direct employees of the CPWD as per the directions of the Constitution Bench of the Hon'ble Supreme Court decided in Steel Authority of India Ltd. (SAIL) case. In another case, the Hon'ble

Supreme Court between the Secretary, Haryana State Electricity Board and Suresh & others(1999-1-LLJ-1086) also held that if the so called contractor was mere name lender, who procured labour for appellant Board as broker, Board was not principal employers called contract was mere camouflage which concealed real relationship for the employer employees.

26. That the workmen also placed the notification 31-07-2002 issued by the Ministry of Labour, Govt. of Indi, New Delhi which prohibited the employment of contract labour in the process/operation or work specified in the schedule and according to the said Notification, the employment of Generator Operator is also prohibited in the establishment of CPWD. The Notification is published in the Gazette of India Extraordinary PART-II Section -3 Sub section (ii) dated 31st July 2002. On the basis of evidence adduced by both the parties, documents placed on record and different judgment of the Hon'ble Supremem Court.

27. That the Workmen witness WW1 & WW2 as per the said documents, even the daily rated workers have been getting their wages in the time scale with all allowances including HRA, CCA, DA, Interim Relief etc. except increment but these workman connected with the dispute denied the said payment and only paid Minimum wages which Act of the Management is also unjustified and evading the payment of equal pay paying to their casual labour/daily wages workers directly appointed by them. The Hon'ble Supreme Court titled "Food Corporation of India Vs. State of U.P. and others.....Respondents reported in 2000 LAB I.C. 3323 has held in para 5 & 7.

"5. The letter of the Labour Department and the certificate issued by the Assistant Department Manager of the appellant at Bankura are in conformity with Rule 25(2) (v)(a) of the Central Rules framed under Contract Labour (Regulation and Abolition) Act, 1970. These two materials clearly indicate that the respondents were doing the job, which is on par with the work of class IV employees. Further the wages to be payable to them on daily rate would be 1/26th of the monthly wages of the class IV employees. These materials were available before the High Court at the time of disposal of FMAT No. 3614 of 1992 and at the time when in interim order was granted in yet another proceeding wherein this principle was adopted. Therefore, the grievance sought to be made out by the learned counsel for the appellant that there has been no inquiry as to parity with regard to class IV employees and the wages payable to the casual workers is palpably incorrect and is not borne out by record at all.

7. Further, the High Court had given a finding that since some casual workers appointed directly by the appellant and some employed by the contractors

are working in the same godown and on the same work, there could not be any scope for making any difference and to deny equal pay for equal work. Proceeding further it was stated that on the principles set out earlier with reference to the letter of the Labour Department, the wages will have to be paid regularly to the respondent at the same rate at which it was paid to the regular employees of the appellant doing identical work which has to be worked out on daily rate basis, from March 1989. The was the order that was affirmed by this Court and was not interfered with. It is difficult for us to comprehend on what basis the appellant can make any complaint now except to engage themselves in nit picking and being over ingenious in making submissions before the Court. The position is, therefore, clear to the effect that this appeal is misconceived and deserves to be dismissed with costs, quantified at Rs. 10,000/-.

28. That as per Section 21 of Contract Labour(Regulation & Abolition) Act 1970 the wages includes the balance of wages or arrears thereof - Principle employer is statutorily responsible to ensure payment of the wages as per the law. Titled Senior Regional Manager, Food Corporation of India, Calcutta and Tulsi Das Bauri & Ors reported 1997-II-LLJ-747 has held in para 5 and 6. The operative para 5 & 6 is reproduce as under :

"5. Section 21 postulates the responsibility for payment of wages. Under sub-section(1) a contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed. Under sub-section(4), in case the contractor fails to make payment of wages within the prescribed period or make short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deducting from any amount payable to the contractor under any contract or as a debt payable by the contractor. That liability has been prescribed under sub-section(2) thereof which says that every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

6. Thus, it could be seen that the principal employer is statutorily responsible to ensure payment of wages as per the law. In case the contractor commits default in the payment of the wages, the principal employer is made responsible for due payment and in case such payment is made he is entitled to have it recovered by deducting from any amount payable



to the contractor under the contract or as a debt payable by the contractor.

29. That it is proved that the contract is sham and coma fledge and also the work of various categories as mentioned in above has been abolished by the notification of Ministry of Labour, Govt. of India dated 31-07-2002 so all the workmen connected with the dispute are entitled to be absorbed/regularization in the establishment of the CPWD is legal and justified.

In view of the above, this Hon'ble CGIT-cum-Labour Court No. II may kindly pass the Award while declaring the Contract between the Management of CPWD and the Contractors mentioned under Column 9 of Annexure filed by the Union, with regard to employment of the workmen listed under Column II of the Annexure referred by the Ministry of Labour, Govt. of India, are Sham & bogus and also Award the regularization of the services of the workmen as per reference and also grant same pay & allowances granted to atleast daily rated workers directly employed by the CPWD from the date of their initial employment under Rule 25(2) (v)(a) of the Central Rules 1971 framed under Contract Labour (Regulation and Abolition) Act, 1970 and this Hon'ble Tribunal also direct the Management to regularize their service as per their policy framed for regularization of daily rated workers w.e.f.11-12-2006.

Against written argument management has not filed written argument in reply.

Ld. A/R for the management orally argued as follows:—

That there is spousal . There is no authorization. Nothing on record to prove. The direct relationship of employer and employee between CPWD and workmen.

Contractor has not been party in the instant case by workmen.

Even name of contractor has not been mentioned in the claim statement. Nor name of the contractor has been disclosed by workman Sh. Joginder Singh in his evidence when he was produce as WW1 .

No documents has been summoned by workmen. Through, moving application u/s 11(3) ID. Act to direct the management to produce the documents. In want of which adverse inference shall be drawn against workmen.

Ruling cited on behalf of workmen are inapplicable in the instant case due to distinguishable facts.

In the light of contentions and counter contention I perused the pleadings of claim statement , written statement and rejoinder as well as evidence of

parties on record principles laid down in the cited rulings including relevant provisions of law.

Perusal of evidence of record shows that workman Sh. Joginder Singh has only been examined on behalf of workmen.

It is relevant to mention here that no documentary evidence has been produced on behalf of workmen. It is also relevant to mention here that workmen have not applied through application u/s 11(3) of I.D. Act to direct the management to produce the original documents which may support the case of workmen. None moving of application u/s 11(3) ID. Act on behalf of workmen raises adverse inference against workmen u/s 114(g) of the Indian Evidence Act.

It is also relevant to mention here that pleadings of any party without required evidence are useless. On the basis of which no case of workmen is made out.

Moreover, settled Law of Hon'ble Supreme Court in case of Secretary State of Karnataka & Others Vs. Uma Devi and Others 2006(4) SCC 1 is applicable in the instant case. On the basis of which none of the workmen are entitled to any relief.

In these circumstances, reference is liable to be decided against workmen and in favour of management.

Which is accordingly decided and claim statement of workmen is dismissed.

Award is accordingly passed.

Dated : 2.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 434.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 51/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22011/33/2008—आईआर (सीएम-II)]  
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 434.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2008) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial

dispute between the management of Food Corporation of India and their workmen, received by the Central Government on 25/02/2015.

[No. L-22011/33/2008 - IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

# **ANNEXURE**

## **CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW**

### **PRESENT**

**RAKESH KUMAR**

**PRESIDING OFFICER**

**I.D. No 51/2008**

L-22011/33/2008-IR(CM-II) dated 24.10.2008

### **BETWEEN**

The State Secretary  
Bharatiya Khadya Nigam Karamchari Sangh  
TC/3V, Vibhuti Khand, Gomti Nagar  
Lucknow

### **AND**

The General Manager  
Food Corporation of India  
TC/3V Vibhuti Khand Gomti Nagar  
Lucknow

The Executive Director(North)  
Food Corporation of India  
Plot No. 2A,2B Sector 24, Gautam Budh Nagar  
Noida (U.P)

### **AWARD**

1. By order No. L-22011/33/2008-IR(CM-II) dated 24.10.2008, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act. 1947 (14 of 1947) referred this industrial dispute between The State Secretary, Bharatiya Khadya Nigam Karamchari Sangh, TC/3V, Vibhuti Khand, Gomti Nagar, Lucknow and The General Manager(UP) Food Corporation of India, TC/3V Vibhuti Khand Gomti Nagar, Lucknow and the Executive Director (North) Food Corporation of India, Plot No. 2A, 2B, Sector 24, Gautam Budh Nagar, Noida (UP) for adjudication.

1. The reference under adjudication is:

“(I). WHETHER THE ACTION OF THE MANAGEMENT OF FCI IN NOT ALLOWING STEPPING UP OF PAY OF SRI S.I. IMAM W.R. TO HIS JUNIOR NAMELY SRI SYED ALI AHMED IS LEGAL & JUSTIFIED?”

2. WHETHER THE ACTION OF THE MANAGEMENT IN IMPOSING PENALTY OF STOPPAGE OF TWO INCREMENTS FOR 2003 & 2004 VIDE THEIR ORDER DATED 29.05.2002 IS LEGAL & JUSTIFIED?

3. TO WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED?”

2. The case of the workman Sri S.I. Imam is that he had submitted an application for stepping up of his pay at par with his junior Sri Syed Ali Ahmad. The opposite party no.1 returned the claim with some query. The workman removed the deficiencies and resubmitted the representation. The opposite party no. 1 has forwarded it to opposite party no.2. The opposite party no.2 has illegally and arbitrarily not granted the relief which he is entitled. The opposite party no.1 & 2 instead of granting stepping up of pay to the workman reduced his pay and started recovery. The workman has stated that opposite party no.1 issued a charge sheet for issuing lesser quantity to unit TAs for fumigation/spray in purposes against actual allotment to misappropriate the same for vested interest. The workman replied the charge sheet and explained the factual position. But the opposite party did not agree with the explanation of workman and imposed penalty of stoppage of two increments for the year 2003 & 2004. The workman stated that management has not given opportunity of hearing to the workman. The workman has prayed for direction to the Management to step up the pay, to set aside punishment order dated 29.5.2002 & appellate order dated 8.11.2006, to revise the pay fixation, and to grant any other relief.

3. The management has filed written statement M-8 stating therein that vide Zonal Office order No. 27/07 dated 31.05.2007, pay of the workman was stepped up w.e.f. 1.12.1988, while doing so the affect of option/benefits taken by the junior for wage revision has not been allowed to the seniors who has not exercised such option. It has also been stated that the case of the workman was examined by Zonal Office (North) Noida Sri S.I. Imam was appointed as AG-III(D) on 26.4.1972 where his pay wrongly fixed w.e.f. 16.8.1971 on his joining on leave vacancy for which he is not entitled. The pay of Sri S.I. Imam has been refixed as AG-III(D) w.e.f. 26.4.1972 by Regional Office order dated 21/23.11.2006 on zonal office (North) direction vide letter no. 2/30(1) Misc/2006-UP/E.VIII/Cat.III/NZ/1039 dated 27.10.2006.

4. The wage revision in revised scale w.e.f. 1.1.1973 was introduced with the optional scheme. Sri S.I. Imam has not exercised any option w.e.f. 1.1.1975 at the stage 150/330, in the revised pay scale of 1.1.1973. The case of Sri S.I. Imam has been examined with the junior affect Sri Swami Nath Sharma, who had exercised option at stage 150/330. The benefit of this option is not given to the senior Sri S.I. Imam.

5. Sri S.I. Imam has been final legible to get the benefit of Head Quarter circular No.29/98 dated 22.7.98 and the pay of Sri S.I. Imam has been stepped up w.e.f. 1.12.1988 vide Zonal office (N) office order no. 27.7 dated 31.5.2007. But while do so, the effect of option/benefit taken by junior option for wage revision 1.1.73 w.e.f. 1.1.1975 has not been given to Sri S.I. Imam who has not exercised such option.

6. The management has pleaded that the claim statement is wrong and charge sheet was given to the workman within rule and well reasoned and speaking order was passed on the representation given by the workman, there is no provision of personal hearing under Regulation 60, such demand was untenable and against the law and rules. The management requested to reject the claim with cost.

7. Thereafter rejoinder W-9 was filed by the workman denying the averments of the written statement and reiterated the claim statement. Vide list W-5, certain paper have been filed by the workman. In rebuttal 8 papers were filed by the management vide M-10.

8. The workman did not turn up before this Tribunal for evidence although sufficient opportunity was given to him. On 8.04.2011 my learned predecessor fixed another date for management evidence. Affidavit of management witness Sri Chanchal Kumar Trivedi M-13 was filed and further the case was fixed for cross examination by the workman. Several dates were given, even then none appeared for the workman to cross examine the management witness. Opportunity for cross examination was closed by my learned predecessor on 15.12.2012 and case was fixed for argument. On 17.11.2014 learned authorized representative of both the parties appeared before Tribunal and requested for fixing the case in the National Lok Adalat on 06.12.2014. Learned authorized representative of the management moved an application mentioning therein that perhaps grievances of the workman have been redressed and therefore the workman has not been appearing in the court for several dates. Learned authorized representative of the workman in writing accepted this version of the management.

9. Under the circumstances and the facts mentioned herein, no relief is legally required to be given to the applicants/workmen. The reference under adjudication is answered as **NO CLAIM AWARD**.

10. Award as above.

Lucknow : 6.12.2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 25 फरवरी, 2015

**का.आ. 435.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू. सी.

एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 291/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25/02/2015 को प्राप्त हुआ था।

[सं. एल-22012/87/1999-आईआर (सीएम-II)]

मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 25th February, 2015

**S.O. 435.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 291/99) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of WCL, and their workmen, received by the Central Government on 25/02/2015.

[No. L-22012/87/1999 - IR(CM-II)]

MD. ZAHID SHARIF, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/291/99

The Secretary,  
RKKMS (INTUC),  
PO Chandametta,  
Distt. Chhindwara (MP)

...Workman/Union

### Versus

General Manager,  
WCL, Kanhan Area,  
PO Dungaria,  
Distt. Chhindwara (MP)

...Management

### AWARD

Passed on this 5th day of February, 2015

1. As per letter dated 25-31/8/1999 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-22012/87/99/IR(CM-II). The dispute under reference relates to:

“Whether the action of the Manager, Tandsi Project of WCL, PO Rampur, Distt. Chhindwara (MP) in dismissing from service of Shri Narendra Kumar Pahade S/o Ganpat D.P.R. of Tandsi Project of WCL, Kanhan Area is justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 3/1 to 3/10. The case of Ist party workman is that he was employed as piece rated workman in Tandsi Project of WCL, Kanhan Area. In the night of 8th and 9th Sept-1997 when he went to attend his duty, Manager Manoj Pandey instead of allowing him on duty started abusing workman. workman without protesting returned from duty. It annoyed Trainee Manager and he with the intention to falsely implicate the workman, reported the matter to Police Station for offence under Section 294, 323 and 506 of IPC. He also submitted false complaint to higher authorities. Chargesheet was issued to him on 9-9-97 abusing and assaulting Manoj Pandey Trainee Manager. Before filing of his reply, Shri N.K.Seth was appointed as Enquiry Officer and Shri N.Rampal, Superintending Engineer (Civil) as Management Representative. Shri N.K.Seth was Welfare Officer. In view of provisions under Mines Act, he was not competent for appointment as Enquiry Officer.

3. Workman submits that enquiry was adjourned from 20-9-97 to 22-9-97 and then to 27-9-97. On 27-9-97, Enquiry officer was informed that workman was on police custody on 27-9-97 and unable to attend enquiry. That enquiry will be faced after he was released on bail. Workman has attended enquiry. That enquiry was not properly conducted. Application for adjournment was rejected without reasons. Principles of natural justice were violated. Management's Representative produced 10 documents. Workman was not supplied copies. Workman was not given proper opportunity for defence. He was not allowed time to produce Defence Assistant Narendra Singh. On 7-10-97, statements of witnesses were recorded. Defence Assistant was not allowed opportunity to cross-examine them. On 7-10-97, workman went to call Defence Assistant. Enquiry Officer recorded statements of other witnesses. It is reiterated that enquiry was not properly conducted. It is illegal. Management was committed to dismiss him from service. On such ground, workman prays for setting aside order of his dismissal and prays for his reinstatement with consequential benefits.

4. IInd party submitted Written Statement at Page 6/1 to 6/8 opposing claim of workman. IInd party submits that on 8-8-97, workman was in 3rd shift ending at 9 AM of next day. When workman reported duty at 1 AM, Jr. Executive Trainee Manoj Kumar given him instructions with regard to the work to be executed. Workman instead of following his instructions engaged in quarrel with Manoj. He abused, threatened and assaulted Manoj Kumar. On complaint of Shri Manoj Kumar, chargesheet was issued to him. Incident was also reported to police. Enquiry was conducted on various dates. Co-worker Nagendra Singh had represented workman. workman was arrested by Police. He was released on 28-9-97. In Enquiry proceedings, statements of witnesses were exhibited. Enquiry Officer submitted his report on 7-10-97 holding charges against

workman were proved. Enquiry was conducted following principles of natural justice. Considering the report of Enquiry Officer and grave charges proved against workman, punishment of dismissal was imposed. The pending criminal case doesnot prohibit Departmental Enquiry. IInd party referred to ratio held in various cases. All adverse contentions of workman are denied. That witnesses were examined in presence of co-worker. He was offered opportunity to cross-examine. IInd party submits that workman is dismissed for proved serious charges against him.

5. As per order dated 9-4-2012, my predecessor held that enquiry conducted against workman is not proper and legal. Enquiry is vitiated. Management was given opportunity to prove misconduct.

6. Considering pleadings between parties and order on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |  |
|--|--|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative                         |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal?              | In Affirmative                         |
| (ii) If not, what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

### REASONS

7. As stated above, enquiry against workman was found illegal/ vitiated. Management was granted permission to prove misconduct of workman in Court. Management filed affidavit of evidence of witness Raj Kishore Sharma working as clerk. Said witness of management has narrated incident that on 8-9-97, he was working overtime in 3rd shift. Workman Narendra Ganpat had attended 3rd shift. He was asked to meet the Manager before marking his attendance. Shri Manoj Kumar was distributing the work around 1.20 AM. At that time, workman was saying that he would not allow Manoj Kumar to distribute work. He was called by other persons Shri B.P.Nag, shakil and Raju Sheikhilal etc. Ist party workman separated from them and inflicted blow by Iron Road causing bleeding from head of Shri Manoj Pandey. Management's witness in his cross-examination says he had not given evidence in criminal case. His statement was recorded in Deptt. Enquiry. He denies suggestion that he had given false evidence. Affidavit of evidence of Manoj Kumar is filed. Said witness of management has also given details of the incident. That workman was asking him why he was not allowing him to mark attendance. That workman was always found missing from point of his work after marking his attendance. While



the witness was going in Deposit section for grouting, workman was found sitting at 3rd gallery. He asked workman reasons why he was sitting there. Workman told he would not go to work. Workman had abused, threatened and assaulted by Iron Rod causing bleeding. Witness of management in his cross-examination says criminal procession was initiated against workman on his report. He claims ignorance whether workman was acquitted in criminal case. He denies suggestion of enmity with workman on deposing false against him. The evidence of both witnesses of management that workman abused, threatened and assaulted Major Kumar is not settled. Their evidence is sufficient to prove charges against workman. For above reasons, I record Point No.1 in Affirmative.

8. **Point No.2-** Learned counsel for workman Shri S.Pandey submits that workman was convicted by Criminal Court, fine of Rs.1000 was imposed. In revision, fine was reduced to Rs.500 observing offence were of petty nature. However copies of judgments of criminal court and judgment in revision are not produced on record. Workman has not examined himself. Written notes of argument are submitted by counsel for workman narrating details of enquiry. Reliance is placed on ratio held in :

Case of Managing Director, ECIL, Hyderabad versus B. Karunkar reported in 1994Supp(2) SCC-391. Ratio held in the case pertains to dismissal without supplying Enquiry Report.

Enquiry against workman is already found illegal. Therefore ratio has no bearing to the case.

Next reliance is placed in case of management of D.T.U versus Shri B.B.L.Hajelay and another reported in 1973-SCC(Lab) 57. Ratio held in the case is that rules and regulations cannot override protection given by statute.

The ratio had no bearing to the case at hand as charges of abusing, threatening, assaulting Shri Manoj Kumar are proved from evidence of management's witnesses.

9. Shri A.K.Shashi for management relies on ratio held in Case of West Bokaro Colleiry versus Ram Pravesh Singh reported in 2009-I-LLJ-220(SC). Their Lordship of Apex Court dealing with Section 11-A of ID Act held- Interference by Tribunal with findings in domestic enquiry, not warranted- standard of proof in departmental proceedings different from that in criminal case.

Next reliance is placed on ratio held in case of Cement Corporation of India versus State of H.P. and other reported in 1995-II-LLJ-987. Their Lordship held when order of dismissal has been passed in accordance with law, the penalty of dismissal cannot be characterized as extreme or harsh.

10. Considering proved charges against workman assaulting, threatening and abusing his superior officers, punishment of dismissal cannot be said harsh. No interference is called for. For above reasons, I record my finding in Point No. 2 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of the Manager, Tandsi Project of WCL, PO Rampur, Distt. Chhindwara (MP) in dismissing from service of Shri Narendra Kumar Pahade S/o Ganpat D.P.R of Tandsi Project of WCL, Kanhan Area is legal and proper.
- (2) Workman is not entitled to any relief.

R.B.PATLE, Presiding Officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 436.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ई.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 323/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/213/2000-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th February, 2015

**S.O. 436.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 323/2000) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. ECL and their workmen, received by the Central Government on 27/02/2015.

[No. L-20012/213/2000-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 1), DHANBAD

IN THE MATTER OF A REFERENCE U/S 10(1)(D) (2A)  
OF I.D. ACT, 1947.

#### Ref. No. 323 of 2000

Employers in relation to the management of Rajmahal  
Project, M/S ECL

AND

Their Workmen

**Present:-** Sri Ranjan Kumar Saran, Presiding officer

**Appearances:**

For the Employers : None

For the workman : Sri B. B. Pandey, Advocate  
Sri R. K. Mukherjee, Advocate

State : Jharkhand Industry : Coal

Dated 24.12.2014

**AWARD**

By Order No. L-20012/213/2000 -IR (C-I), dated 25/10/2000, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

“Whether the demand of the Union from the Management of Rajmahal Project of Eastern Coalfield Ltd. Lalmatia Godda for considering the 84 workman (as per list) engaged under contractors for the last 13 years for permanent absorption in the company is justified? If so, to what relief are the workmen entitled and from what date?”

**Name of the Workman**

1. Shri Seikh Mukhtar
2. Shri Seikh Safik
3. Shri Deo Kumar Yadav
4. Shri Jagan Tanti
5. Shri Chhote Lal Rajak
6. Shri Ajay Yadav
7. Shri Ramji Rajak
8. Shri Upendra Tanti
9. Shri Seikh Izrayal
10. Shri Seikh Kalamuddin
11. Shri Rajdeo Rajak
12. Shri Ganauri Rajak
13. Shri Devidayal Yadav
14. Shri Bharat Tanti
15. Shri Srilal Tanti
16. Shri Md. Islam
17. Shri Sabhapati Tanti
18. Shri Birbal Tanti
19. Shri Mahendra Tanti

20. Shri Ashok Yadav
21. Shri Dillp Ram
22. Shri Kisan Mondal
23. Kailash Mondal
24. Shri Suresh Tanti
25. Shri Makin Mansuri
26. Shri Mahesh Tanti
27. Shri Raja Ram Yadav
28. Sri Bhubneshwar Yadav
29. Shri Shoshin Yadav
30. Shri Yamuna Tanti
31. Shri Yogendra Kushwaha
32. Sri Nageshwar Thakur
33. Shri Yogendra Mondal
34. Shri Karu Yadav
35. Shri Sakhi Chandra Thakur
36. Sri Sakaldeep Pashwan
37. Shri Mahesh Yadav
38. Shri Niro Pashwan
39. Shri Jagdeo Yadav
40. Shri Upendra Yadav
41. Shri Tunna Yadav
42. Shri Missan Tanti
43. Shri Jai Prakash Yadav
44. Md. Illyas
45. Shri Jagarnath Tanti
46. Sri Bishwakarma Thakur
47. Shri Chaurasi Roy
48. Shri Chhabil Yadav
49. Shri Kailash Yadav
50. Ranjeet Yadav
51. Shri Shanbhu Sharan Yadav
52. Shri Chhote Lal Yadav
53. Shri Mahendra Pd. Yadav
54. Shri Kokai Yadav
55. Shri Dewal Pd. Yadav
56. Shri Chhabi Lal Yadav
57. Shri Rodh Rajak
58. Shri Gore Lal Yadav

59. Shri Birendra Yadav
60. Shri Nirdo Yadav
61. Shri Tileshwar Yadav
62. Shri Billo Yadav
63. Shri Rameshwar Tanti
64. Shri Lal Mohan Roy
65. Shri Bali Yadav
66. Shri Bhutai Yadav
67. Shri Rajendra Yadav
68. Shri Daya Nand Yadav
69. Shri Bibekanand Yadav
70. Shri Dillp Yadav
71. Shri Pankaj Kumar
72. Shri Anil Yadav
73. Shri Bhotali Tanti
74. Shri Brahmdeo Yadav
75. Shri Chulai Yadav
76. Shri Jai Prakash Yadav
77. Shri Shiv Kumar Sah
78. Shri Utiam Choudhari
79. Shri Sheo Nath Choudhary
80. Shri Anirudh Yadav
81. Shri Shiv Nandan Yadav
82. Shri Upendra Yadav
83. Shri Ram Lakhan Yadav
84. Shri Seikh Firoj

2. This reference is received from the Ministry of Labour on 21.11.2000. After receipt of the reference, both parties are noticed. The Sponsoring Union/workman files their written statement on 12.09.2001, Thereafter the management files their written statement on 23.08.2002. workman's documents marked as exhibits W-1 to W-3/1. one witness has been examined on behalf of the workman.

3. The short point for consideration is the concerned workmen are required to be regularized under the ECL management or not.

4. Admittedly the workmen were engaged by the contractors, but the management subsequently adopted new type of mechanism, wanted to disengage the workman for which a settlement was arrived by the Union of the concerned workman and the ECL management before the Dy. CLC Patna marked Ext. W-

5. The workman also filed the photo copies of their I.D cards etc, and photos being authenticated by the Union.

The management disputes the identity of the workman and claims that the claim of the workman should be refused.

6. One witnesses form the side of the workman examined but on behalf of the management not a single witness has been examined and they have not controverted the versions of the workman.

7. Moreover the management remained complete silent regarding the settlement arrived by them or their implementation. There is no dispute that the workman have not been rendering service to the management, therefore the case is decided as per the terms given below.

- (a) The management shall pay a sum of Rs. 80,000/- to each of the workman within 2 month from the publication of the award in the gazette. In case the workman died in the meantime his LRs be paid the said amount within the above stipulated period, after proper identification.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 437.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 80/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/75/2005-आईआर (सी-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th February, 2015

**S.O. 437.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 80/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 27/02/2015.

[No. L-20012/75/2005-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference U/S 10 (I) (d) (2A)  
of I.D. Act, 1947

**Reference: No. 80/2005**

**Parties:**

Employer in relation to the management of  
Sijua Area of M/s. BCCL

AND

Their workmen

**Present :** Sri R. K. Saran, Presiding Officer

**Appearances :**

For the Employers : Shri D.K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 16.12.2014

**AWARD**

By order No. L-20012/75/2005 IR (C-I) dated 13.9.2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

**SCHEDULE**

“Whether the action of the management of Tetulmari Colliery of M/s. BCCL in dismissing Md. Sahil M/Loader from the service of the company vide letter dated 24/28.8.2004 is fair and justified? If not to what relief is the concerned workman entitled?”

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently by the workman. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No disputed Award is passed. Communicate to the Ministry.

R. K. SARAN, Presiding officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 438.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 17/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/123/2005-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th February, 2015

**S.O. 438.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2010)

of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 27/02/2015.

[No. L-20012/123/2005-IR(C-I)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL NO.1, DHANBAD**

In the matter of reference U/S 10(1) (d) (2A)  
of I.D. Act, 1947

**Ref. No. 17 / 2010**

Employer in relation to the management of Central  
Hospital, M/s. BCCL

AND

Their workmen

**Appearances:**

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri Pintu Mondal, Rep.

State : Jharkhand Industry : Coal

Dated 16.12.2014

**AWARD**

By order No. L-12012/123/2005-IR (C-I) dt. 05/02/2010 the Central Government in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

**SCHEDULE**

“Whether the action of the Management of Central Hospital of M/s. BCCL in dismissing Smt. Sunity Lakra alias Singh Sister - in -charge from the service of the company w.e.f. 31.08.2005 is justified and legal ?  
(ii) To what relief is the workman concerned entitled?”

2. This Case is received from the Ministry on 25/02/2010. During the pendency of the case. The representative of workman submits that workman is not interested to contest the case. It is felt that the dispute between parties is resolved. Hence “No dispute” award is passed. communicate.

R. K. SARAN, Presiding officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 439.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बी.सी.सी.एल.



के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 13/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2015 को प्राप्त हुआ था।

[सं. एल-20012/187/2004-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th February, 2015

**S.O. 439.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 13/2005) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 27/02/2015.

[No. L-20012/187/2004-IR(C-I)]

M. K. SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A)  
of I.D. Act, 1947

**Ref. No. 13/2005**

Employer in relation to the management of Sudamdih  
Shaft Mine of M/s. BCCL

AND

Their workmen

**Present :** Sri R.K.Saran, Presiding Officer

#### Appearances:

For the employers : Sri U. N. Lall, Advocate

For the Workman : Sri S.C. Gour, Rep.

State : Jharkhand

Industry : Coal

Dated 26.12.2014

#### AWARD

By Order No. L-20012/187/2004- IR(C-I) dated 17-12-2004 the Central Government in the Ministry of Labour has, in exercise of power conferred by clause (d) of sub-section(I) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

#### SCHEDULE

“Whether the action of the management of Sudamdih Shaft Mine of M/s. BCCL, in dismissing Sri Ram Prasad Paswan, M/Loader for the services of the

company w.e.f. 06.07.2002 is just, fair and legal? If not, To what relief is the concerned workman is entitled ?”

2. The case is received from the Ministry of Labour on 03.01.2005. After receipt of reference, both parties are noticed. They appeared through representative. The Sponsoring Union files their written statement on 16.05.2005. The management also files their written statement-cum-rejoinder on 10.11.2005. Thereafter rejoinder and document filed by the parties. Both side adduced one witness each their behalf. Management's document marked as Ext. M-1 to M-10.

3. Short point to be decided in this case as to whether the dismissal of the workman is legal and justified.

4. The domestic enquiry of the case held fair and proper. The ground of dismissal was absent on duty regularly. But MW-I admitted that during the service period workman, he was ill and was treated in the management's hospital and document to that effect has been filed.

5. The widow of the workman said in her evidence has stated after dismissal, she was forced to come to their native village where he breathed his last before decision of the reference.

6. Absenteeism, due to illness is quite natural. The widow of the workman is young so also the workman was young. The dismissal in this situation is the harshest punishment. Hence the dismissal of the workman is held illegal.

7. Considering the facts and circumstances of this case, I hold that the action of the management of Sudamdih Shaft Mine of M/S BCCL, in dismissing Sri Ram Prasad Paswan, M/Loader for the services of the company w.e.f. 06.07.2002 is not fair. Therefore her widow /LR be given appropriate relief as awarded to the deceased workman's LR as per the scheme.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 440.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुम्बई इंटरनेशनल एयरपोर्ट प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुम्बई के पंचाट (संदर्भ संख्या 64/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 27/02/2015 को प्राप्त हुआ था।

[सं. एल-11012/30/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 27th February, 2015

## AWARD

**S.O. 440.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2013) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of M/s. Mumbai International Airport Pvt. Ltd. and their workmen, received by the Central Government on 27/02/2015.

[No. L-11012/30/2013-IR(CM-I)]

M. K. SINGH, Section Officer

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT :** K. B. KATAKE, Presiding Officer

### REFERENCE NO. CGIT-2/64 of 2013

EMPLOYERS IN RELATION TO THE MANAGEMENT  
OF MUMBAI INTERNATIONAL AIRPORTS PVT. LTD.  
& ANR

1. The Vice President-HR  
Mumbai International Airports Pvt. Ltd.  
Terminal 1-B  
Chhatrapati Shivaji International Airport  
Santacruz (E)  
Mumbai-400 099.
2. The Director  
M/s. Omega Enterprises  
201, 1st floor, D-Wing  
Ashok Nagar Housing Society  
Military Road, Marol  
Andheri (E)  
Mumbai 400 072.

**AND**

**THEIR WORKMEN**

The General Secretary  
Airport Aviation Employees Union  
Terminal 1-B, Above CSI Airport  
Santacruz (E)  
Mumbai 400 099.

### APPEARANCES :

**FOR THE EMPLOYER (1) :** Ms. Mitra Das, Advocate

**FOR THE EMPLOYER (2) :** No appearance.

**FOR THE WORKMEN :** Mr. Chandrakant Dhadke,  
Representative.

Mumbai, dated the 15th January, 2015

The Government of India, Ministry of Labour & Employment by its Order No.L-11012/30/2013 IR (CM-I), dated 24.10.2013 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

“Whether the dispute as raised against M/s. Omega Enterprises who is a contractor in the case by the union of Contractors Labourers i.e. Airports Aviation Employees Union lies. against the management of M/s. Mumbai International Airport Ltd. (MIAL) who is Principal Employer in the case? If so, what relief the workmen are entitled to?”

2. After receipt of the reference from Ministry of Labour & Employment, notices were sent to both the parties. In response to the notice, Shri Chandtakant Dhadke, Secretary of the Union filed an application dated 24/12/2013 (Ex-5) stating that the matter has been settled and they do not want to proceed further with the reference and prayed to dispose of the reference as settled. Union also filed copy of settlement alongwith Exhibit-6. Management no.1 filed their Say (Ex-7) on Ex-5 & 6 contending that neither they are aware of the nexus/connection between Omega and Hawaii Karmachari Sena nor concerned with any purported settlement reached between Omega and Hawaii Karmachari Sena and or AAEU. Thereafter matter was adjourned for hearing on Ex-5 & 6. But neither Union nor Management no.2 remained present. In the circumstances the reference deserves to be dismissed for want of prosecution. Thus I proceed to pass the following order:

## ORDER

Reference stands dismissed for want of prosecution.

Date: 15.01.2015

K. B. KATAKE, Presiding Officer

नई दिल्ली, 27 फरवरी, 2015

**का.आ. 441.**—केन्द्रीय सरकार, कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 91-क के साथ पठित धारा 88 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए एतद्वारा हिन्दुस्तान पेपर कार्पोरेशन लिमिटेड, कागजनगर, असम के नागांव पेपर मिल के कारखानों/स्थापनाओं के नियमित कर्मचारियों को इस अधिनियम के प्रवर्तन से छूट प्रदान करती है। यह छूट, 30 मार्च, 2015 से एक वर्ष की अवधि के लिए लागू रहेगी।

2. उक्त छूट निम्नलिखित शर्तों के अधीन है; अर्थात् –

- (1) पूर्वोक्त स्थापना जिसमें कर्मचारी नियोजित हैं, एक रजिस्टर रखेगी, जिसमें छूट प्राप्त कर्मचारियों के नाम और पदनाम दिखाये जायेंगे;

- (2) इस छूट के होते हुए भी, कर्मचारी उक्त अधिनियम के अधीन ऐसी प्रसूविधाएं प्राप्त करते रहेंगे जिनको पाने के लिए वे इस अधिसूचना द्वारा दी गई छूट के प्रवृत्त होने की तारीख से पूर्व संदत्त अंशदानों के आधार पर हकदार हो जाते हैं;
- (3) छूट प्राप्त अवधि के लिए, यदि कोई अभिदाय पहले ही किए जा चुके हों, तो वे वापस नहीं किए जाएंगे;
- (4) उक्त कारखाने/स्थापना का नियोजक उस अवधि की बाबत जिसके दौरान उस कारखाने/स्थापना पर उक्त अधिनियम (जिसे इसमें इसके पश्चात उक्त अवधि कहा गया है) प्रवर्तमान था ऐसी विवरणियां, ऐसे प्रारूप में और ऐसी विशिष्टियों सहित देगा जो कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 के अधीन उसे उक्त अवधि की बाबत देनी अपेक्षित होती थीं
- (5) निगम द्वारा उक्त कर्मचारी राज्य बीमा अधिनियम की धारा 45 की उप-धारा (1) के अधीन नियुक्त किया गया कोई निरीक्षक या निगम का इस निमित्त प्राधिकृत कोई अन्य पदधारी;
- (i) धारा 44 की उप-धारा (1) के अधीन, उक्त अवधि की बाबत दी गई किसी विवरण की विशिष्टियों को सत्यापित करने के प्रयोजनार्थ अथवा
- (ii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी राज्य बीमा (साधारण) विनियम, 1950 द्वारा यथाअपेक्षित रजिस्टर और अभिलेख उक्त अवधि के लिए रखे गये थे या नहीं; या
- (iii) यह अभिनिश्चित करने के प्रयोजनार्थ कि कर्मचारी, नियोजक द्वारा दिये गए उन फायदों को, जिसके फलस्वरूप इस अधिसूचना के अधीन छूट दी जा रही है, नकद में और वस्तु रूप में पाने का हकदार बना हुआ है या नहीं; या
- (iv) यह अभिनिश्चित करने के प्रयोजनार्थ कि उस अवधि के दौरान, जब उक्त कारखाने के संबंध में अधिनियम के उपबंध प्रवृत्त थे, ऐसे किन्हीं उपबंधों का अनुपालन किया गया था या नहीं, निम्नलिखित कार्य करने के लिए सशक्त होगा :-
- (क) प्रधान या आसन्न नियोजक से अपेक्षा करना कि वह उसे ऐसी जानकारी दे जिसे उपरोक्त निरीक्षक या अन्य पदधारी आवश्यक समझता है; अथवा
- (ख) ऐसे प्रधान या आसन्न नियोजक के अधिभोगाधीन, किसी कारखाने, स्थापना, कार्यालय या अन्य परिसर में किसी भी उचित समय पर प्रवेश करना और उसके प्रभारी से यह अपेक्षा करना कि वह व्यक्तियों के नियोजन और मजदूरी के संदाय से संबंधित ऐसे लेखा, बहियां

और अन्य दस्तावेज, ऐसे निरीक्षक या अन्य पदधारी के समक्ष प्रस्तुत करें और उनकी परीक्षा करने दें या ऐसी जानकारी दें जिसे वे आवश्यक समझते हैं; या

(ग) प्रधान या आसन्न नियोजक की, उसके अभिकर्ता या सेवक की, या ऐसे किसी व्यक्ति को, जो ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में पाया जाए, यह विश्वास करने का युक्तियुक्त कारण है कि वह कर्मचारी है, परीक्षा करना; या

(घ) ऐसे कारखाने, स्थापना, कार्यालय या अन्य परिसर में रखे गए किसी रजिस्टर, लेखा, बही या अन्य दस्तावेज की नकल तैयार करना या उद्धरण लेना;

(ङ) यथानिर्धारित अन्य शक्तियों का प्रयोग करना।

6. विनिवेश/निगमीकरण के मामले में, प्रदत्त छूट स्वतः रद्द हो जाएगी और तब नए प्रतिष्ठान को छूट हेतु समुचित सरकार की अनुमति लेनी होगी।

[सं. एस-38014/4/2013-एस.एस-1]

अजय मलिक, अवर सचिव

New Delhi, the 27th February, 2015

**S.O. 441.**—In exercise of the power conferred by Section 88 read with Section 91-A of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby exempts the regular employees of factories/establishments of Nagaon Paper Mill of Hindustan Paper Corporation Ltd., Kagajnagar, Assam from the operation of the said Act. The exemption shall be effective w.e.f. 30.03.2015 for a period of one year.

2. The above exemption is subject to the following conditions namely:-

- (1) The aforesaid establishments wherein the employees are employed shall maintain a register showing the name and designations of the exempted employees';
- (2) Notwithstanding this exemption, the employees shall continue to receive such benefits under the said Act to which they might have become entitled to on the basis of the contributions paid prior to the date from which exemption granted by this notification operates;
- (3) The contributions for the exempted period, if already paid, shall not be refundable;
- (4) The employer of the said factory/establishment shall submit in respect of the period during which that factory was subject to the operation of the said Act (hereinafter referred as the said period),

such returns in such forms and containing such particulars as were due from it in respect of the said period under the Employees' State Insurance (General) Regulations, 1950;

(5) Any Social Security Officer appointed by the Corporation under sub-section (1) of Section 45 of the said ESI Act or other official of the Corporation authorized in this behalf by it, shall, for the purpose of :-

(i) Verifying the particulars contained in any returned submitted under sub-section (1) of section 44 for the said period; or

(ii) Ascertaining whether registers and records were maintained as required by the Employees' State Insurance (General) Regulations, 1950 for the said period; or

(iii) Ascertaining whether the employees continue to be entitled to benefits provided by the employer in cash and kind being benefits in consideration of which exemption is being granted under this notification; or

(iv) Ascertaining whether any of the provisions of the Act had been complied with during the period when such provisions were in force in relation to the said factory to be empowered to:

(a) require the principal or immediate employer to him such information as he may consider necessary for the purpose of this Act; or

(b) at any reasonable time enter any factory, establishment, office or other premises occupied by such principal or immediate employer at any reasonable time and require any person found in charge thereof to produce to such inspector or other official and allow him to examine accounts, books and other documents relating to the employment of personal and payment of wages or to furnish to him such information as he may consider necessary; or

(c) examine the principal or immediate employer, his agent or servant, or any person found in such factory, establishment, office or other premises or any person whom the said inspector or other official has reasonable cause to believe to have been an employee; or

(d) make copies of or take extracts from any register, account book or other document maintained in such factory, establishment, office or other premises,

(e) exercise such other powers as may be prescribed.

(6) In case of disinvestment/corporatization, the exemption granted shall become automatically cancelled and then the new entity will have to approach the appropriate Government for exemption.

[No. S-38014/04/2013-SS-I]

AJAY MALIK, Under Secy.

नई दिल्ली, 2 मार्च, 2015

**का.आ. 442.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र के संबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय पुणे के पंचाट (83/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/88/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 442.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 83/2009) of the Indus.Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/88/2008 - IR(B-II)]

RAVI KUMAR, Desk Officer

## ANNEXURE

### BEFORE THE PRESIDING OFFICER, FIRST LABOUR COURT, PUNE

**Reference (IDA) No. 83/2009** Exh. No.:

The Regional Manager,  
Punjab National Bank, Arora Towers,  
M. G. Road, Pune 411001) ....First Party

### Versus

Mr. Shivaji Manohar Bhosale, )  
C/o. Vikas Gulabrao Raut,  
1/18, PMC Colony, Sambhajinagar,  
Wakdewadi, Pune 411003. ....Second Party

REFERENCE UNDER SECTION 10(1) AND 11 (A)  
OF THE INDUSTRIAL DISPUTES ACT, 1947

**Coram :** Jayendra C. Jagdale, Presiding Officer



**Appearances :**

Adv. Mr. Z. B. Attar, for the second party,

First party absent after filing Written Statement.

**AWARD**

(Dated 14th July 2014)

(1) The present reference has been sent by the Central Government to this Court for the adjudication over the demand of the second party, that whether the action of the management of Punjab National Bank, Pune in imposing the penalty of dismissal from bank services on Shri. Shivaji Manohar Bhosale is legal and justified. What relief the concerned workmen is entitled to ?

(2) The second party has filed his statement of claim vide Exh. no. 4. It is submitted that the second party was appointed by the Bank in the year 1986 as a peon and was posted to Manik Dhondi Branch at Ahmednagar District. He has rendered continuous service without any blame. The first party is a Nationalized Banking company carrying the business of extending the loans and finance to the needy persons. The Bank has established various regions for smooth functioning and his branch comes under Pune Region. The service conditions of the employees are governed by the settlement known as Shastri Award and other Awards.

(3) The second party was served with a charge sheet dated 03.06.2006 alleging that he with the help of Mr. N. R. Shinde, misappropriated Bank's fund by making corresponding fictitious entries in the ledgers and the pass book of the customers and also committed gross misconduct under the Clause 5 (j) and 5 (i) of the By Parte settlement for the act prejudicial to the interest of the Bank. The explanation was called for, the second party called certain documents for the inspection and thereafter he has submitted the detailed say to the charge sheet and denied the charges levelled against him.

(4) There were three employees working in that branch viz. Branch Manager, Clerk cum Cashier and Peon/ Daftari. It is submitted that the duty cast upon the cashier was put on the shoulder of the second party. The work done by his was as per instructions of his seniors. In the charge sheet it was not mentioned that he was responsible for accepting cash, maintain the ledgers, issue the pass book as his duty. He was just helping the cashier. There was no complaint filed by the Branch Manager against him prior to issuance of charge sheet.

(5) It is submitted that after filing reply disciplinary authority appointed Enquiry Officer to conduct the enquiry for the charges levelled in the charge sheet. Mr. S. M. Niphadkar was appointed as an Enquiry Officer and Mr. Vargis was appointed as the Prosecuting Officer of the Bank. It is submitted that the Enquiry Officer has not

followed the principle of natural justice. The Enquiry Officer has not given the specific reason as to why the defence of the second party was not accepted and why the evidence of the Bank was appealed to the Enquiry Officer. The findings of the Enquiry Officer are also on hear say evidence and without support of the documents. Therefore, the findings of the Enquiry Officer are also perverse. He was punished with the compulsory retirement by giving all monetary benefits and was dismissed. Therefore, the second party has sought for reinstatement in service along with continuity and full back wages.

(6) The first party filed its 'Written Statement' vide Exh. No.:6 and denied all the adverse allegations. It is submitted that the service conditions of the employees are governed by the settlement known as Shastri Award and Desai Awards signed under provisions of Industrial Disputes Act, 1947 applicable to all the employees. The Memorandum of Settlement of disciplinary action and procedure thereof in respect of workman staff has been signed on 10.04.2002 by the Indian Bank's Association on behalf of 52 member banks including first party. In accordance to these provisions disciplinary action was taken against the second party and he was inflicted punishment of "Dismissal without notice" vide order dated 29.06.2007 of Disciplinary Authority after affording due opportunities in terms of principles of natural justice. The second party has not availed the recourse of appeal within 45 days.

(7) It is submitted that the second party was appointed in the bank as peon on 01.07.1986 and was posted since 27.01.1998, where he was suspended on 17.01.2006 and subsequently served with charge sheet dated 03.06.2006 under Para 5 (j) and 5 (l) of the Bipartite Settlement dated 10.04.2002 for the following acts of gross misconducts:

- 5(j) He made fictitious entries in Bank's Book of account, manipulated bank's record, embezzled bank's fund and was negligent in discharging his duties as peon-cum-daftari resulting in serious financial loss to Bank.
- 5(l) He perpetrated fraud along with Shri. N. R. Shinde, Cashier-Cum-CTO at the branch as cited in the confessional statement dated 16.01.2006 of Shri. N. R. Shinde.

(8) It is submitted that after receiving the charge sheet the second party was desiring to inspect the documents. He was allowed to inspect but he did not avail the opportunity. In his reply dated 28.02.2006, second party himself stated that the entries were made in his own handwriting. Thus, after finding his reply unsatisfactory, departmental enquiry was initiated against him to find out the truth in the charges levelled against the second party. He has attended the enquiry along with the defence

representative. During the enquiry due opportunity was given to the second party. After concluding enquiry, the enquiry officer has submitted his report holding that the charges against the second party are proved. The second party was served with the enquiry report and reply was sought for. The second party submitted that he was falsely implicated and used by Shri. N. R. Shinde in perpetrating the fraud and that he was innocent.

(9) The report of the enquiry officer along with connected record and submissions of the second party were duly considered and confirmed the punishment of “Dismissal without Notice” dated 29.06.2007 against which second party did not prefer appeal. Th the second party is not entitled to any relief such as reinstatement with full back wages and continuity of service. Lastly it has prayed to reject the reference.

(10) Following issues arise for my determination and findings against them are recorded for the reasons that follow.

ISSUES	FINDINGS
1) Whether the enquiry held against the second party by the first party is fair, legal and proper ?	In the Negative
2) Whether the misconduct of the second party is proved by acceptable evidence in the inquiry or in the Court ?	In the Negative
3) Whether the punishment imposed is shockingly disproportionate to the misconduct proved ?	In the Affirmative
4) Whether the second party proves that the first party has illegally terminated his services ?	In the Affirmative
5) Whether the second party is entitled to get the relief as sought ?	Partly in the Affirmative
6) What Order ?	As per final order.

### REASONS

(11) In support of his case, the second party has examined himself vide Ex. No. 12. The first party has not adduced any evidence.

The argument advanced by Ld. Adv. Mr. Attar for the second party is heard. The argument of first party no. 1 is treated as heard as per record.

### AS TO ISSUE NOS. 1 & 2 :

(12) The second party Mr. Shivaji Manohar Bhosale filed his affidavit in lieu of examination in chief vide Exh.:12. Therein he has contended that he was appointed as peon-cum-daftari in the establishment of first party. He claimed that he had been in employment for 24 years and his entire

service record was unblemished. Moreover, his service conditions are governed by provisions of Industrial Disputes Act, 1947. At the time when charge sheet was issued against him, he was working in the Manik Dhondi Branch in district Ahmednagar. After issuance of show cause notice to him, he was suspended since 03.06.2006. The second party further claimed that at the branch of Manik Dhondi he was posted along with Branch manager, cashier-cum-clerk and he was not allowed to receive cash from the customers as well as he was not allowed to make payment. Moreover, he was not allowed to make entries in cash book or relevant record maintained in the bank. Under such circumstances, it was impossible to do any manipulation or misappropriation. The second party specifically asserted that in all eighteen employees of the bank were charge sheeted on the same ground but all the clerical staff, cashier were acquitted and action of punishment of dismissal inflicted against second party only. The second party further claims that enquiry conducted against him was not in accordance to the principles of natural justice and the findings recorded by the enquiry officer were not based upon evidence led before him. On the basis of perverse findings, his services were terminated. The second party further claimed that the contentions of the first party in its written statement is without any substance. He further claimed that after termination he tried for alternative employment but till the date of affidavit he had not got any appointment and therefore, he is facing critical financial position. On the basis of said averments the second party claimed reinstatement with continuity and back wages.

(13) In the light of specific contentions of the second party, it is interesting to take note of contentions of first party as submitted through written statement. It is undisputed that the second party was appointed in the bank as a peon from 01.07.1986 and at the relevant time he was posted at the branch of Manik Dhondi. It is also undisputed that he was suspended from 17.01.2006 and subsequently served with charge sheet dated 03.06.2006. He has been charge sheeted for the acts of making fictitious entries in Bank's Book of account, manipulated bank's record, embezzled bank's fund and he was negligent in discharging his duties as peon-cum-daftari. He perpetrated fraud along with Shri. N. R. Shinde, Cashier Cum CTO at the said branch. Thus there is no need to verify the appointment order or service record of the second party; as it is clear from the written statement itself that he was in regular employment of the first party. Surprisingly, it has been mentioned again and again about the enquiry proceeding and how opportunities were given to the second party in the entire enquiry proceeding. But the said enquiry papers have not been produced by the first party for the reasons best known to them.

(14) Moreover, it is admitted fact that second party was appointed as a peon and at the relevant time he was working as a peon. It is surprising that charges levelled against the second party is in respect of embezzlement of bank funds and manipulation of bank record and account books. Obviously, the duty list of a peon does not include analyzing the bank papers or dealing with the bank funds. He was not entitled to accept cash or maintain ledgers or issue pass books. His only duty assigned was to help the staff and cashier. Therefore, the first party has miserably failed to prove the charges levelled against the second party. Though it has been referred in the written statement that charges have been proved against the second party still in the absence of any details thereof, one cannot conclude that the said charges have been proved against the second party. Moreover, the first party cannot claim that charges against the second party has been proved unless and until they bring enquiry papers in the Court. The first party has not produced any chit of paper in respect of domestic enquiry. In view of Section 114 (g) of Indian Evidence Act, an adverse inference can be drawn against the first party.

(15) If the punishment is based upon finding of domestic enquiry and thereafter matter is referred to the Labour Court then such papers of domestic enquiry should be presented for the perusal of Court. In the present case the first party failed to produce original enquiry papers of domestic enquiry conducted against the second party. No reasons assigned on behalf of the first party as to why the first party has not placed said domestic enquiry papers. Though it has been referred in its written statement about the outcome of alleged domestic enquiry as well as evidence produced therein, still the first party has not placed the papers of domestic enquiry as well as report of domestic enquiry. Herein I would like to place reliance upon observations of Hon'ble Bombay High Court in Hirenbhai Sakharani Vs. New India Silk Mills Bombay; reported in 1950 1 CR 746 (IC) wherein the Lordship has observed that if the record of the enquiry is not produced then the witness should be examined to corroborate the enquiry officer that he held the enquiry and misconduct was proved. In the instant case the first party has neither examined enquiry officer nor examined any other witness to prove the said enquiry. Under such circumstances, it can hardly be said that proper, fair and in accordance to the principles of natural justice the enquiry was conducted against the second party. When the enquiry is not in accordance with the principles of natural justice, the misconduct cannot be said as proved by acceptable evidence in the enquiry. Therefore, I answer issue nos. 1 and 2 in the negative.

#### AS TO ISSUE NOS. 3 TO 6:

(16) These issues are interlinked with each other. Therefore, it is desirable to discuss them together for brevity.

(17) This Court has already come to the conclusion that the enquiry is not fair and the misconduct is not proved by acceptable evidence. Therefore, when the misconduct is not proved by acceptable evidence, it is shockingly disproportionate. It caused severe prejudice to the second party. Considering this aspect the second party proves that he has been illegally terminated by the first party. This Court has come to the conclusion that the punishment was shockingly disproportionate and the second party was illegally terminated, therefore, he is entitled to the reliefs claimed. But so far as the quantum of back wages is concerned, the second party has stated in his affidavit that he has tried to get alternative employment but he was unable to get any job. He has not filed any documentary evidence to corroborate his oral version. Therefore, considering his oral version and the span of near about 5 years from the dismissal, it will be just and proper to grant 50% back wages from the date of dismissal till actual reinstatement in service. Accordingly, I answer issue nos. 3 and 4 in the affirmative and issue no. 5 partly in the affirmative. Hence, I proceed to pass the following order.

#### ORDER

- (1) The reference is answered in affirmative and accordingly it is allowed partly.
- (2) The first party Bank is directed to reinstate the second party in his original post with continuity of service and with 50% back wages for the period from the date of dismissal till actual reinstatement.
- (3) The first party shall also pay the cost of litigation of Rs. 1,000/to the second party.

JAYENDRAC. JAGDALE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 443.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ महाराष्ट्र के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (5/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12011/136/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 443.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2009) of the Central Government Industrial Tribunal-cum-Labour

Court, Pune as shown in the Annexure, in the industrial dispute between the management of Bank of Maharashtra and their workmen, received by the Central Government on 02/03/2015.

[No. L-12011/136/2008 - IR(B-II)]

RAVI KUMAR, Desk Officer

# **ANNEXURE**

## **IN THE INDUSTRIAL COURT MAHARASHTRA AT PUNE**

### **Reference (IT) No. 5 of 2009**

The General Manager,  
Bank of Maharashtra,  
Regional Office Solapur,  
Plot No.94, Gaikwad Bhavan,  
Murarji Peth, Pune Road,  
Solapur - 413 002.

... First Party

**And**

The Joint Secretary,  
Bank of Maharashtra Karmchari Sangh,  
'Vishwakarma Bhavan', 185, Shaniwar Peth,  
Pune - 411 030.

... Second Party

### **AWARD**

**( Dated : 10.07.2014 )**

The parties have been absent. The demand raised is regarding absorption of the concerned workmen on the permanent roll of the Bank of Maharashtra. An interim relief application was filed by the said workman, on which some order was passed which was for a particular period. This Tribunal on 10.04.2014 by order directed that the reference itself would be taken up expeditiously. The union or the concerned workman do not appear to be interested in the claim. There is no evidence lead in support of the averments and the claim. The demand is not substantiated by evidence. Reference is therefore, disposed of.

D.H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 444.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार विजय बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (6/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/96/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 444.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 6/2009) of the Central Government Indus. Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the industrial dispute between the management of Vijaya Bank and their workmen, received by the Central Government on 02/03/2015.

[No - L-12012/96/2008 - IR(B-II)]

RAVI KUMAR, Desk Officer

# **ANNEXURE**

## **BEFORE SHRID.H.DESHMUKH, INDUSTRIAL TRIBUNAL, AT PUNE**

### **Reference (IT) No. 06 of 2009**

#### **Between :**

Vijaya Bank,

Miraj Branch,

Miraj.

.. First Party

**And**

Shri Rajaram Sampati Hatekar

.. Second Party

**ADVOCATES :** Shri P. M. Deshmukh,  
Advocate for First Party.

Shri K. D. Shinde, Advocate  
for Second Party.

### **AWARD**

**(Date : 12-08-2014)**

Parties have been absent. No evidence led to substantiate the demand. The claim, therefore, cannot be adjudicated upon. Reference stands disposed of.

D.H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 445.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (10/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/122/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 445.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central



Government hereby publishes the Award (Ref.10/2007) of the Indus.Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 02/03/2015

[No - L-12012/122/2006 - IR(B-II)]  
RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE INDUSTRIAL TRIBUNAL MAHARASHTRA AT PUNE

#### Reference (IT) No. 10/2007

The Regional Manager  
Dena Bank  
Regional Office, Madhav Chambers  
398/A, Senapati Bapat Road,  
Pune 411 016 ...First Party

Vs.

Kamalkar Gulabrao Salvi  
27, Chandrama Nagar,  
Near Mental Hospital  
Yerawada, Pune 411 006 ...Second Party

**CORAM:** Shri. D.H. Deshmukh, I/c. Presiding Officer

#### APPEARANCES:

None for First Party.

Shri A V Satpute, Advocate for Second Party.

#### AWARD

(Date : 10.03.2014)

This is a reference made by Government of India, for adjudication of industrial dispute between Shri. Kamalakar Gulabrao Salvi (Second Party, for short), and The Regional Manager, Dena Bank, Pune (First Party, for short). The demand in the schedule is as follows :—

*“Whether the action of the management of Dena Bank in not regularising Shri. Kamalakar Gulabrao Salvi on permanent basis is legal and justified ? If not, to what relief the concerned workman is entitled?”*

2. The Second Party has contended that he was employed with the First Party as a peon in 1993, and had worked there from time to time, but he has been deprived of from the benefits of permanency. He was appointed in 1993, after following due procedure of selection. He was interviewed by the selection panel, and he was promised to absorb in permanent service / post within two years. The Second Party performed the duties honestly and to the satisfaction etc. The Second Party has contended that initially he had worked as a Badli peon in February

1993. Thereafter, the First Party made other Junior Badli employees permanent, but not the Second Party. The Second Party had worked for 282 days during 15.02.2001 to 26.11.2001. It is contended that some of the Badli peons like the Second Party have been promoted as clerks. The Second Party was told by the First Party orally that the Second Party should check up with the Bank every month for the job. The Bank did not give employment to the Second Party during July 2003 and May 2007. The Second Party belongs to the Schedule Caste. On February 2006, he was told that there was no vacancy in the Bank. The legal notice was sent etc. The Second party was constantly pursuing and persuading the First Party for job. The Second Party called for job as a peon w.e.f. 16.05.2007, and was initially given posting in Camp Branch, but he was harassed. Thereafter, he was transferred to Branch at Bhosari. The Second Party has stated about the harassment made.

3. The First Party opposed the claim by reply Exh. C-7. It is contended that the reference itself is not maintainable, because it was made under the presumption that the employer-employee relationship persists or exists. There is total non-application of mind while making the reference. The dispute is not an industrial dispute. Then, it is contended that the Second Party is trying to get a back door entry in the employment, which is not permissible. There is no post of peon in the Bank. The employment and the employment period is denied. The First Party has contended that the Second Party has never gone through prescribed / approved recruitment process as required in law. It is denied that the Second Party has completed 240 days. It is also denied that the Second Party was working from 1993 to 2001.

4. The Bank has contended that the services of the Second Party were used by the Branch Manager, in his individual capacity as a self employed person, as and when required. The Manager had paid on per day basis, and it was not the salary paid by the Bank. The further contention is that, the Second Party might have been engaged for few days for doing sweeping and other miscellaneous work. He was paid on voucher for whatever work was done by him. Then, it is contended that whenever there is work, the Second Party is called in accordance with the bank, and government policy. It is denied that any promises were given. The contention is that, at present i.e. when the reply was filed, there is no vacancy for Schedule Caste. The First Party has denied the adverse allegations. According to it, the Bank is governed by the recruitment policy laid down by the Reserve Bank of India etc. The First Party has pressed for rejection of the reference.

5. The issues that arise for my determination, and my findings thereon are as follows :-

ISSUES	FINDINGS
1. Whether the action/inaction of the First Party in not regularising the Second Party in permanent service is legal and justified ?	Not justified
2. What relief/award ?	As per final order

### REASONS

6. The Second Party has adduced oral as well as documentary evidence. I have gone through the record, and have heard the submissions made.

The Second Party submitted affidavit by way of examination in chief at Exh. U-19, stating on the lines of the case as pleaded. The affidavit indicates that in February 1993, the Second Party was appointed as a Badli Peon. He was selected after completing due procedure and other 8 candidates were also selected. The Second party was registered with the Employment Exchange. The First party Bank had called candidates from the Employment Exchange, as per the requirement. Thereafter, the Selection Board of the Bank had interviewed the Second party. At that time, he was assured / promised of absorption on permanent basis within two years. The Second party worked in various branches of the Bank. After some period, he was discontinued for want of vacancy. However, others who were Junior, and some direct recruits were given job superceding / bypassing seniority of the Second party. The First Party has made permanent other badli persons, who were Junior to the Second party, even though, they were not appointed by following due procedure. The Second Party had worked for more than 240 days during certain period / phases. In February 2001 to November 2001 the working days were 282, from 05.01.2008 to 31.07.2009 the working days were 567. During this period, he received the salary through Bank. From 05.08.1998 to 31.12.1998, the Second Party worked for 146 days.

7. The Second Party has stated that according to circular of the First Party, an employee who completes 240 days has to be made permanent. The Second Party has stated about the letter / reply dated 13.06.2006 submitted by the First party before the conciliation officer. After constant persuasion by the Second party, he was finally called for the job of peon w.e.f. 16.05.2007, and posted at Camp Branch, but only to be harassed.

8. The Second Party was cross examined by the learned counsel - Mr. Joshi, who had appeared for the First party. In cross examination, the Second Party stated that he joined the Bank in 1993 as a peon. He was initially engaged as a peon, but subsequently was told that he was a Badli Peon. He has no documentary evidence. The First Party is a nationalised bank. The Second party does not know about the union. He admits that he was not appointed

in the permanent post of the peon. He further states that he does not know if there is a procedure for making appointment. The cross examination was adjourned on request of Mr. Joshi, the learned counsel. Thereafter, adjournments were given, but Mr. Joshi Advocate on 05.03.2014 passed "No Instruction Purshis" at Exh. C-14. The learned counsel appears to have given notice to the First Party Bank about his intention to file "No Instruction Purshis". The copies of relevant documents are produced by the counsel. The First party has not appeared even after passing "No Instruction Purshis" by the counsel. The Second Party was ready and willing to face the cross examination. Since the Bank itself failed to cross examine the Second party, whatever evidence led can be said to be virtually unchallenged.

9. The dispute referred by the Government is regarding permanency. Therefore, whatever is stated in the prayer clause of the statement of claim is no very much relevant. This Court is required to consider the regularisation or permanency for the Second party workmen. The evidence and the documents indicate that the Second party was duly selected by following procedure, and he was appointed as Badli peon initially. Others were also appointed as Badli peon. The undisputed letter dated 13.06.2006 addressed by the First Party to the Regional Labour Commissioner, Government of India indicates that the Second Party is in the approved panel of Badli Peon. The letter further reads that the services of the Second Party were used as Badli Sepoy at various branches of the District as per need. There are 9 candidates including the Second party in the approved panel of Badli Sepoy, and the Second party is at Serial no.1 in the Schedule Caste category. In the letter, it is stated that the list of approved badli sepy is maintained. The Badli sepyos are absorbed in regular service of the Bank only when the permanent vacancy arises in the category, otherwise, he continues as badli till vacancy arises. This letter dated 13.06.2006 corroborates the oral evidence and the documents produced by the Second Party. This particular letter is at page 52 of document Exh.U-20 A collectively.

10. The documents indicate that the Second Party was selected as Badli peon in 1993, and thereafter, he had worked from time to time, but not continuously. He had worked for 240 days during certain period. The evidence indicates that badli peon / sepyo who are Juniors to the Second party have been made permanent, and even promoted as clerk. The Second party is not made permanent. He is not being provided work regularly. There is vacancy. By making Junior employees permanent, injustice has been done to the Second party. This Tribunal had passed an interim order that during the pendency of the reference, the services of the Second party shall not be terminated, without following due process of law. This interim order was passed on 11.04.2008. It appears that the Second Party was in employment during the relevant period.

11. Having regard to the services put in by the Second party, the promise given to him regarding absorption, his initial selection by following due process of law, and the proved fact that the Juniors have been made permanent etc., the Second Party was entitled to be made permanent in service as Sepoy / Peon / any other like post. The First Party failed to regularise the services of the Second party by not making him permanent. The Regional Manager himself stated in the letter that Badli Sepoy is absorbed in regular service, when there is a permanent vacancy. The action of not regularising the services of the Second Party is totally unjustified.

12. Having considered everything, I find that the Second party is entitled to be regularised or made permanent in the post of peon / sepoy or any other equivalent or like post, and further, he is also entitled to the benefits of permanent employment including the wages and allowances etc. This reference was made in July 2007, and it was received by this Tribunal on 02.08.2007. The ends of justice would be met if the Second party is made permanent w.e.f. 01.08.2007 and given the benefits of permanency accordingly, with effect from that day. The permanency benefits shall include wages, and allowances etc., as applicable to the permanent employees.

D.H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 446.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आई डी बी आई लि के प्रबंधन के संबद्ध नियोजको और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय, पुणे के पंचाट (14 / 2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02 / 03 / 2015 को प्राप्त हुआ था।

[सं. एल-12012/46/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 446.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2007) of the Indus.Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the industrial dispute between the management of IDBI Ltd and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/46/2007 - IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

IN THE INDUSTRIAL TRIBUNAL MAHARASHTRA  
AT PUNE

Reference (IT) No. 14/2007

The General Manager,  
I.D.B.I. Ltd., 172/4, Raviwar Peth,  
Shivaji Circle, Satara. ... First Party

AND

Shri Somnath M. Daitule  
Maliwada Pargalli, House No.4824  
Ahmednagar. ... Second Party

**CORAM :** Shri. A.M. Tamboli, Presiding Officer

**Appearances :** Mr. Y.P. Vipradas, Advocate for First Party.  
Mr. Malegaonkar, Advocate for Second Party.

#### AWARD

(Dated : 17.09.2014)

The Government of India, Ministry of Labour, New Delhi, vide its order dated 23.08.2007 has referred the dispute between one Shri Somnath Daitule and IDBI Ltd., to this Tribunal for adjudication in exercise of powers conferred U/s.10 of the Industrial Disputes Act.

2. The brief facts of the present dispute are as under:

One Somnath Daitule the second party workman, was employee working as a Peon with first party Bank at its branch at Ahmednagar since 06.06.1983. When he was in the employment of predecessor of the first party bank i.e. United Western Bank, the bank on 08.02.2006 and 26.05.2006 issued him two charge-sheets alleging misconduct, and enquiry was initiated against him regarding the said charges on 24.07.2006 at Pune, before one Shri S.V. Joshi, Zonal Manager, Zonal Office, Pune, the disciplinary authority.

3. The second party alleged that, on the day of the enquiry he was not given an opportunity of being heard, nor any time was given to him to give reply to the charges. But about one hour prior to the actual enquiry one Ravindra Devchakke, member of the Karmchari Sangh, Vijay Aychit and S.V. Joshi called him in their cabin, and asked him/threatened him that, if he does not resign from his services, they will file criminal case against him for cheating. Under the circumstances under coercion & undue influence the first party asked the second party to resign from service on 24.07.2006, and there was no option for the second party but to resign. He has further contended that, he has done this under pressure and in order to avoid the clutches of the criminal case against him. The second party has further contended that, first party assured him if he resigns he would be treated to have retired voluntary, and all charges levelled against him would be taken back, and he would get all retirement benefits. He has also contended that due to the said retirement from service, he has lost his bread & butter, and he was the only bread earner for his family.

4. He has also contended that the enquiry proceedings was in English. Nobody explained him the

proceedings and by doing this the first party has indulged in unfair labour practice. He has also contended that, under the circumstances enquiry conducted against him is not legal, fair & proper, and thus is vitiated. He has further contended that, on the very day the enquiry proceedings was concluded, and on the same day final order with proposed punishment was passed which he received after one month. It is contended that on the very day stoppage of increment order was passed and also his services were terminated w.e.f. 01.08.2006. Thus it is alleged that the entire exercise done by the first party is illegal, erroneous, malafide and by way of victimisation amounting to unfair labour practice. Therefore he has made an application before the Asstt. Commissioner of Labour praying for reinstatement with full back wages and continuity of service, and for declaration of unfair labour practices, but nothing could come out of it, and there was failure report of the Labour Commissioner, and consequently the Labour Commissioner referred the dispute alongwith failure report before this Tribunal. Therefore the second party prayed for direction to the first party to reinstate him in service with full back wages and continuity of service.

5. The first party also appeared in the matter and denied all the allegations made by the second party in their written statement. They have denied that, the second party is entitled for reinstatement with full back wages and continuity of service. They have stated that, the claim of the second party is not maintainable in law. They have also stated that Industrial Court has no jurisdiction to entertain and try the reference as the first party Bank has not terminated the services of the workman, but the second party has voluntarily submitted application for voluntary retirement which was considered by the erstwhile United Western Bank Ltd., which is amalgamated with the first party IDBI Bank as per the scheme of amalgamation of the year 2006. Under the circumstances when the erstwhile United Western Bank has relieved the second party from its services there is no employer-employee relationship between the first party and the second party, and thus the second party has no cause of action against the first party. Under the circumstances the first party has prayed for rejection of the claim/reference.

6. It is also stated that the reference suffers from mis-joinder of the parties. They have denied that, the second party was forced to resign, and he has resigned under coercion and undue influence or under any other pressure. It is stated that the second party did not give reply to the charges levelled against him, and at the time of domestic enquiry his representative was present and full opportunity was given to him to defend himself.

7. It is denied that before one hour of commencing of the domestic enquiry he was threatened by the officers of the Bank to resign him otherwise they have threatened of taking criminal action against him. It is denied that, they

have assured the second party that his resignation will be treated as voluntary retirement and he would be entitled for all the retirement benefits. It is stated that he was relieved on 31.07.2006 and subsequently, the first party has received undated application on 07.08.2006 wherein the second party has admitted all the charges levelled against him and expressed his desire to take back his application for voluntary retirement, and requested for reinstatement in service on initial basic pay as a fresh recruited. But the same was not considered by the erstwhile United Western Bank, since he was already relieved from the services and as per pension regulation and service conditions which were applicable to him does not provide for the same. They have also stated that, they have put up their stand before the Asstt. Labour Commissioner at the time of conciliation proceedings. Under the circumstances the first party has denied that, it has indulged in any unfair labour practice, and therefore the first party has stated that, the second party is not entitled for any of the reliefs.

8. Upon the claim & written statement, my Ld. predecessor Shri K.W. Thakare, the then Member of the Industrial Court, Pune framed the following issues on 11.02.2011, and I have given my findings against each of them for the reasons mentioned below:—

<u>ISSUES</u>	<u>FINDINGS</u>
1) Does the second party proves that the action of the management, in compulsory retirement of second party w.e.f. 24/7/2006 is illegal and unjustified ?	No
2) Does the second party prove that he is entitled to the relief as prayed for ?	No
3) What Award ?	As per final Award.

### **REASONS**

9. In order to prove their case, the second party workman has examined himself and closed his evidence. The Bank has examined Shri Chandrakant Rajaram Patil-Asstt General Manager, Vijaykumar Govind Aychit-clerk working in United Western Bank and who was a defence representative of the second party, Deochake Ravindra Manohar-Manager Personnel of erstwhile United Western Bank and Suhas Vasant Joshi-Zonal Manager, and closed their evidence.

10. **As to Issue No.1 :** According to the second party, the first party i.e. erstwhile United Western Bank has forced him to resign from the services under threat of prosecuting him, and therefore, unwillingly he was resigned on 24.07.2006 and from 01.08.2006 he was relieved from the services, and thus according to the second party, he was



compulsorily retired and this act of the first party is illegal and unjustified.

11. During the course of argument, it was argued that there is a difference between compulsory retirement, termination and voluntary retirement. It was submitted on the part of the first party that, the second party workman had resigned from the service on his sweet will, he was neither threatened, nor coerced, thus it is simply a resignation. But the reference speaks about compulsory retirement which is not in consonance with the dispute between the parties, and thus according to the first party when the reference itself is defective the court cannot entertain it or cannot extend it or travel beyond the reference, and as there is no compulsory retirement the reference itself is bad. As against this the Ld. Advocate for the first party attracted my attention towards Section-10 of the Industrial Disputes Act. Section-10(1)(b) runs as under:

“Where the appropriate government is of opinion that any industrial dispute exists or is apprehended, it may at any time by order in writing refer any matter appearing to be connected with or relevant to the dispute, to a court for enquiry”.

Thus as the controversy between the parties is regarding bringing to an end the services of the second party, whether it is by way of compulsory retirement or termination or by accepting the resignation can be considered in the present reference without giving much importance to the nomenclature used in the reference. Thus by entertaining the real controversy between the parties this Tribunal is not travelling beyond the reference.

12. During the course of argument, it was also submitted that there was no employer-employee relationship between the parties as the second party was in the employment of erstwhile United Western Bank which was amalgamated into first party IDBI Bank and his services were terminated by the United Western Bank. Thus according to the first party as there is no relationship between the second party and first party, the second party is not entitled for any relief from the first party. During the course of argument the Ld. Advocate for the second party attracted my attention towards definition of Sec-25FF of the I.D. Act. Section-25FF runs as under:—

“Where the ownership or management of an undertaking is transferred, whether by agreement or by operation of law, from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section-25F, as if the workman had been retrenched. Provided that nothing in this section shall apply to a workman in any case where there has been a change of employers by reason of the transfer, if - (a) the

service of the workman has not been interrupted by such transfer.

(b) ..... (c) .....”

And submitted that since after the amalgamation of United Western Bank with IDBI Ltd. no compensation was paid to him and as the dispute was pending the IDBI Bank i.e. the first party the successor of United Western Bank is liable for the acts and misdeeds of United Western Bank, and therefore according to him simply by saying that IDBI did not employ him or did not terminate his services they cannot shrink their responsibility. To my mind IDBI bank is successor of United Western Bank, and therefore they are liable for the actions of the United Western Bank, and thus though the United Western Bank has terminated the services of the second party, if it is ultimately found that termination of services by United Western Bank is illegal then the IDBI bank first party is bound by the orders passed by this court.

13. Now coming to the main controversy between the parties as to taking of resignation application from the second party under coercion is concern. According to the second party on 24.07.2006 the day on which the domestic enquiry was to be conducted, the officers of erstwhile United Western Bank forced him to give resignation application, and therefore he has given the resignation application. According to second party one Vijaykumar Aychit, Ravindra Deochake and S.V. Joshi, threatened him that if he does not give resignation, they will prosecute him, and therefore he had no option. When he says so, it is clear that he has given resignation application on 24.07.2006, the only question which is to be considered is, as to whether this resignation application was given by him under any threat or coercion. It is pertinent to note that, in order to refute the allegations made by second party, the first party Bank has examined all the said three persons named by the second party who have allegedly coerced him. All the said three persons in cross-examination denied that they have threatened or coerced the second party to resign. Thus there is word against word, but the fact remains that the resignation is signed by the second party which is at Exh.C-14 colly. It is pertinent to note that Exh.C-14 application dated 24.07.2006 is type written and on the very day he has also given another letter in writing which is hand written to the Bank Manager, that instead of taking police action against him for his misdeeds he may be allowed to resign. The second party has also requested the bank to set right his dues from the retirement benefits. Thus by reading both these letters it is clear that a hand written letter is a letter of a common man, but the second typed letter must have been written by a person having official knowledge. But the tenor of both the letters is one and the same, and therefore, simply because the type letter cannot be in the language of the second party it cannot be said that he must have been forced or coerced to sign it, and thereby resigning from the services.

14. During the course of argument, the Ld. Advocate for the second party attracted my attention towards a term locus poenitentiae and submitted that when the second party has given the resignation, he should have given an opportunity to withdraw it, i.e. he should have been given an opportunity to think over his action, and his resignation ought not to have been accepted in haste, and thus according to him when the rules provide for three months notice, his resignation ought not to have been accepted within three months. Thus according to him acceptance of the resignation forthwith is an illegal act on the part of the first party. He has also submitted that, the second party has given a letter dated 19.09.2006 which is also at Exh.C-14 colly, to the Bank, wherein he has stated that he should be reinstated in the service. The said letter is in Marathi. In the said letter he has stated that, as he was mentally disturbed and officers of the Bank in furtherance of their common intention have obtained his signature over the papers, and have obtained his so called resignation letter. In a nutshell, by the said letter he has withdrawn the resignation letter dated 24.07.2006. Thus according to the Advocate for the second party, he has withdrawn his resignation within three months from the day on which it was given, and therefore, the said purported resignation letter ought not to have been acted upon. In support of his contentions he has relied upon the observations of Hon'ble Supreme Court in Rajkumar V/s. Union of India, reported in 1969-AIR-180; Punjab National Bank V/s. P.K. Mittal, reported in 1989-LLR-Vol.XX-194; Mool Chand Kharati Ram Hospital & Ayurvedic Research Institute V/s. Govt of Delhi, reported in 2002-I-CLR-617; and submitted that when no opportunity to withdraw resignation application was given, when there is a specific period of three months provided in the service rules, accepting the resignation and relieving him from the services amounts to compulsory retirement, which is illegal and invalid.

15. During the course of argument the Ld. Advocate for the first party bank has attracted my attention towards the contents of the resignation letter, and pointed out that the second party workman in the letter itself has stated that, as per the rules in order to retire three months notice is necessary, but he has sought for relaxation of said condition, and asked for relieving him forthwith. To my mind when he himself has asked for relieving him forthwith by not waiting for three months, now it does not lie in his mouth that the Bank should have waited for three months. Under the circumstances the acceptance of the resignation by the Bank and relieving him forthwith cannot be termed as compulsory retirement, that too, illegal and unjustifiable. Hence I answer this Issue in the negative.

16. **Issue No.2 :** In view of my above discussion as to Issue No.1, I am of the opinion that the second party workman is not entitled for relief of reinstatement and back wages with continuity of service as prayed for. Hence I answer this Issue in the negative.

17. **Issue No.3 :** In view of my above discussion, it is clear that the Bank has accepted resignation of the second party, and thus he is not compulsorily retired. Thus the question of retiring compulsory by illegal way or unjustifiably does not arise, and therefore the second party is not entitled for any of the reliefs. Hence I propose to pass the following award.

#### AWARD

1. The reference is disposed of.
2. The action of the Management IDBI, Satara is not of compulsorily retiring the second party, but it is of accepting his resignation.
3. The second party is not entitled to any relief.
4. Award be drawn accordingly and be communicated to Govt of India.

Pune

Dated : 17.09.2014

A. M. TAMBOLI, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 447.**—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय पुणे के पंचाट (13/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 02.03.2015 को प्राप्त हुआ था।

ज [सं. एल-12012/45/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 447.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.No. 13/2007) of the Indus.Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/45/2007 - IR (B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

**BEFORE SHRID. H. DESHMUKH,  
INDUSTRIAL TRIBUNAL AT PUNE**

**Reference (IT) No. 13 of 2007**

#### **Between :**

The Zonal Manager  
Bank of India

1162/6, Shivajinagar,  
University Road,  
PUNE - 411 005.

.. First Party

**And**

Shri Bhagwan Dhaku Patole  
901, Nana Peth,  
PUNE - 411 002.

.. Second party

**ADVOCATES:** Shri H. D. Gokhale Advocate for First  
Party

Shri Atul Dixit, Advocate for Second  
Party.

### **AWARD**

**(Date : 31-01-2014)**

This is a reference made by Government of India, Ministry of Labour, for adjudication of dispute between Bank of India, and Shri Bhagwan D. Patole. The Schedule in the reference order contains following demand :-

“Whether the action of the management of Bank of India, Pune in imposing the penalty of compulsory retirement vide order dt. 3-4-2002 of Shri Bhagwan B. Patole, without proper conducting departmental enquiry is legal and justified ? If not, to what relief the workman is entitled to ?”

2. According to the second party workmen, he was employed with the first party bank as a Sepoy/Peon from 1-3-1983, and his last drawn wages were Rs.8,000/-p.m. He had allegedly rendered unblemished service. The second party was served with suspension order on 1-1-2002, and was also issued subsequently a charge-sheet. It is contended that the charges were false and frivolous, and based on the incident, which never happened. The first party promised not to terminate the services of second party, and had given assurance. The second party admitted the charges of misconduct, which he had never committed. Thereafter, the first party did not conduct the enquiry as required in law. The statement of the second party was used against him. The disciplinary authority gave a finding, in which he stated that the amount of Rs.300/- was paid back immediately, and therefore, there is no loss to the bank or customer. However, in spite of this, the punishment of compulsory retirement was inflicted. The second party had made a representation for taking a lenient view, but that was not accepted. Thereafter, departmental appeal was filed etc. In this way the second party prayed for all the benefits.

3. The first party bank has resisted the claim, denying all adverse allegations. According to the Bank, the second party was appointed as Sub-Staff/Sepoy, and at the relevant time he was working in Bhavani Peth Branch. On 26-12-2001 one Dhanpal Oswal of Alankar Medical Stores came in the bank to deposit an amount of Rs.83,700/- in their account.

The receiving cashier retained loose cash with him for counting, and handed over packets tied with rubber band to the second party for handing over the same to second cashier for counting. It was found that the cash deposited by Oswal was short by Rs.300/- i.e. 3 notes of Rs.100/- were less. Thereafter, it was revealed and found during investigating that the second party was responsible for pilferage of Rs.300/-. The second party admitted guilt in writing on the same day. Thereafter, he was placed under suspension pending enquiry, and the charge-sheet was issued for the charge of “doing any act prejudicial to the interest of the Bank or negligence involving or likely to involve the Bank in serious loss.” The charge was framed in accordance with the bipartite settlement. The second party was directed to submit written statement in defence. The second party submitted the statement, admitting the charge. In view of the unconditional admission in writing, there was no necessity to hold a domestic enquiry. According to the bank, the pilferage of Rs.300/- by bank employee involved dishonesty, and malafide intention. The bank lost faith etc. The punishment was meted out in view of the seriousness of misconduct. Denying the adverse allegations and the claim, the bank prayed for answering the reference in the negative.

4. The issues and my findings thereon are as follows :

### **ISSUES**

### **FINDINGS**

1. Whether action of first party of compulsory retirement by the order dt. 3-4-2002 of Shri B. D. Patole is legal & justified ?

Yes

2. What Award ?

As per final award.

### **REASONS**

5. The second party has examined himself. Whereas the bank has produced two witnesses, in addition to a number of original documents. I have gone through the entire record, and have heard Mr. Dixit and Mr. Gokhale, the learned counsels.

6. The second party in his evidence has stated that he had served for 18 years with spotless service record. He was falsely charge-sheeted for unauthorizedly taking away or stealing Rs.300/-. The charges were not acceptable to him. The amount of Rs.300/- was deposited by him only because he was falsely held responsible. None had made complaint against him for that. The officers of the bank, on 26-12-2001, obtained from him a confession/admission, according to their requirements, although there was no fault or mistake on the part of the second party. The second party was allowed to leave the premises late in the night only after he had given the statement. The officers had given an assurance that no action would be taken against

him. The second party gave confession statement, relying upon the assurance, and in view of the pressure of the bank officers. The reply dt.25-2-2002 was also given as per the say of the bank officers, and in view of the assurance that no serious action would be taken. The second party has stated about the ex-parte proceeding held against him, breach of service rules, etc. His representation was not considered. The second party further stated that the punishment is extremely harsh. He is unemployed since then etc.

In cross-examination, the second party has admitted that whenever necessary, the concerned Peon used to take the bundle of notes from the receiving cashier, and hand over the same to the other cashier, and vice-versa. Admittedly, on the relevant day, the second party gave three packets of Rs.100/- notes of Alankar Medical Stores to Beena Kulkarni, Cashier, after taking the same from the receiving cashier Awaghade. He denies that Mrs. Kulkarni found three notes short in one packet, and at that time, the second party confessed of having taken three notes. Admittedly, the second party was suspended and served with a charge-sheet. The second party admits the signature on the letter dt.25-2-2002, which is produced at Sr. No. 4 of Exh.C-3 (Exh.C-6), and he is also aware of the contents of that letter. Second party volunteered to state that the letter was written as per the directions of the Branch Manager. He also admits the letter dt. 19-3-2002, which is at Exh.C-7, and it bears his signature. The second party then admitted that in the enquiry, Shri Bhavne acted as defence representative on his behalf. Admittedly, the letter dt. 20-3-2002 and copy of the findings bear signature of the second party. Admittedly, the second party gave reply to the findings of the enquiry officer, by letter dt.28-3-2002, which is at Exh.C-3. The second party admits that the proceedings of the particular day were recorded and given to him. He also admits the representation given by his representative to the disciplinary authority. The second party then admits that on 2-4-2002 he gave representation to the disciplinary authority, admitting the guilt, and requesting for minor punishment. The letter dt. 2-4-2002 produced with Exh.C-3 at Sr.No.11 also bears signature of the second party.

7. The second party was put certain questions/suggestions in respect of past service record. The second party is not able to tell why he did not plead the name of the officers, who asked him to admit the guilt.

8. The first party bank has examined Shri Maruti Woyal, who is working as Peon. Woyal knows the second party. Both of them were working in Bhavani Peth Branch during the relevant period. According to Woyal, on 26-12-2001 the second party was doing the duty as Cash Peon until Woyal reported for duty. On that day, Woyal

reported late, with permission of the superior. Woyal then stated that the customer from Alankar Medical Stores came to the bank, and handed over cash to Shri Awaghade, Cashier. The Cashier kept loose notes, and passed on bundles to Smt. Kulkarni, Receiving Cashier. Woyal was to hand over the cash bundle to Smt. Kulkarni. However, at that time, the second party picked up the bundles, and handed over to Smt. Kulkarni. At that time, Woyal noticed second party putting his hand in his pocket. Woyal then came to know about shortage of notes etc. Woyal then stated that before lunch break, he met and told second party casually, that if he had taken the notes, he should give it back, because the officer is strict, and the matter can go to the police. At that time, second party abruptly got up, and brought notes of Rs.300/-, and gave it to Woyal. Woyal handed over the said notes to Smt. Kulkarni, and submitted a written report, which is on record. According to Woyal, there was no enmity or animosity between him, and the second party.

In cross-examination, Woyal admits that documentary evidence about duty hours or cabin duty is not produced. He is unable to tell how many notes were there in the cash brought by Alankar Medical Stores. It does not take any time to pass on the bundles of notes to back side for counting etc.

9. The bank has examined Smt. Beena Kulkarni, who is Administrative Manager. In the year 2001, she was Cashier in Bhavani Peth Branch. Kulkarni has also stated about the incident of 26-12-2001. Woyal came late, and therefore, Patole was given the duty of cash peon. Kulkarni was sorting cash at that time and Shri Awaghade was the receiving cashier. Kulkarni has stated about the procedure of the counting notes. The loose notes are counted by receiving cashier and bundles are passed on to the other cashier through peon for counting by machine. The counting machine was out of order since 24-12-2001, and therefore, she was counting the notes by hand. Kulkarni then stated about the customer from Alankar Medical Stores, who had come to deposit the money. Awaghade accepted the cash and bundles were to be given to Woyal for passing on to Kulkarni. At that time, the second party picked up the cash bundles, and handed over to Kulkarni. At that time, Kulkarni said that while picking up the cash, second party had his hand in the pocket of the pant, which was seen by Woyal etc. Statement of Kulkarni indicates that there was some investigation/enquiry. Telephonic call was made to Alankar Medical Stores. That customer told the manager that if the police was called, the matter would get complicated, and that the customer would pay the short amount. Woyal then explained to the second party. The second party brought three notes of Rs.100/- each at 2.30 p.m. Kulkarni has disclosed the numbers of the notes. She had submitted a report.



In cross-examination, Kulkarni admits that no document is produced to show that on relevant day two peons were asked to work in cash cabin. The distance between the receiving cashier and sorting officer is 8 ft. The currency notes brought by Alankar Medical Stores were bound by rubber band. Kulkarni admits that she had not actually seen the incident of removing the currency note from those bundles. She submitted written report after Wayal told her about the incident etc.

10. The documents produced by the first party are very important. Admittedly, the second party on 26-12-2001 gave a statement, which is produced on record. In that statement, the second party admits that he had taken Rs.300/- from the cash of Alankar Medical Stores, and it was his mistake. He also admits that he had handed over three notes to Wayal. Second party requested for pardon, giving assurance that the mistake will not be repeated. The second party was given charge-sheet dt.4-2-2002, which is at Exh.C-20. In the charge-sheet, the details of the incident are mentioned. The charge was under Clause 19.5(J) of the Bipartite Settlement. The charge is doing any act prejudicial to the interest of the bank or negligence etc. In the charge-sheet, the second party was directed to submit written statement within seven days. Marathi Version of the charge-sheet was also enclosed. In response to the charge-sheet, the second party gave reply dt.25-2-2002, which is at Exh.C-6. In the said reply also, the second party admits that he committed the mistake inadvertently. He admits the mistake. It is further stated that due to domestic difficulties, his mental condition was not normal, and therefore the mistake was committed. The second party regretted the mistake. Second party also mentioned about the return of cash. He requested for sympathetic consideration.

11. The second party was given the memorandum dated 20-3-2002 at Exh.C-8. In the memorandum given by the disciplinary authority, it is stated that the second party had voluntarily and unconditionally admitted the charges. Before considering the finding prepared by the disciplinary authority, the second party was again called upon to make submission, if any. The second party made his submissions by letter dt.28-3-2002, which is at Ex.C-9. In the said letter, the second party again admits the mistake, which was committed on 26-12-2001. He requested for taking maximum lenient view, and assured that he would not give any cause to the complain in future.

12. The bank has produced all original documents. The material documents are not in dispute. In none of the replies or explanations, the second party had stated that he was given an assurance that no serious action would be taken, if he admitted the guilt. There is no whisper about any pressure or assurance. The theory of assurance or giving confession due to assurance and pressure, is clearly

afterthought. The bank did not conduct a fulfilled enquiry. This was because the second party repeatedly admitted the guilt, and the charges, and therefore, there was no requirement to conduct any further enquiry.

13. Apart from the documents, containing confession and admission of guilt, the bank has examined two witnesses, who were present at the relevant time. Laxman Wayal was the Peon, who had virtually seen second party stealing the notes. The two witnesses examined by the bank, do not have any reason to make false statement against the second party.

Having regard to the material on record, I find that the charge was duly proved on the basis of admission. The act of unauthorizedly taking away the amount of Rs. 300/- from the cash of the customer was nothing but a theft. The act was dishonest, and it was definitely prejudicial to the interest of the bank. The bank is a public sector bank. The money in the bank is public money. A bank employee including Peon, has a duty to work honestly, and with full integrity. In view of the attempted theft or dishonest act, the bank claims to have lost faith in the second party. The punishment meted out is that of compulsory retirement. In the pleadings, there is no ground that compulsory retirement is not the punishment provided in the settlement. Apart from that, the bank has produced the subsequent settlement, which contains the punishments, and compulsory retirement is one of the punishments, which could be imposed.

14. The present proceedings are not a criminal trial. The degree of proof required is of preponderance of probabilities. In this case, there is clear admission of guilt. In view of that nothing more is required to prove the guilt. If a public sector bank decides to compulsorily retire a peon for a dishonest act of unauthorizedly taking away money of the customer, the punishment, in my view, cannot be said to be illegal or unjustified. Showing sympathy as claimed by Mr. Dixit, is not possible in such a case, because as held by the superior Courts, it would be a misplaced sympathy. The fact that ultimately the bank was not put to any loss, is also not relevant. The second party gave back Rs.300/-. The Alankar Medical Stores had also brought Rs.300/- to make good the shortage. That however does not mitigate the gravity of the misconduct.

15. Having regard to the material on record, and the submissions made, I do not find any justification in interfering with the action of compulsory retirement. Second Party Shri Bhagwan D. Patole is not entitled to reinstatement, or any other relief as claimed. The reference accordingly stands answered in the negative.

Pune

Date : 31.01.2014

D. H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 448.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 17/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/118/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 448.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 12/02/2015.

[No. L-12012/118/2007-IR(B-II)]

RAVI KUMAR, Desk Officer

**ANNEXURE****IN THE INDUSTRIAL TRIBUNAL, AT PUNE****Reference (IT) No. 17 of 2008****Between:**

Assistant General Manager,  
Bank of Baroda,  
Plaza Chamber,  
4th Floor, Dr. Atmaram Borkar Road,  
Panji Goa - 403 101.

**And**

Bank of Baroda  
Shahupuri Branch  
Kolhapur

...First Party

**And**

Shri Balasaheb Erandole  
Post Sarnobat Wadi,  
Taluka Karveer,  
Kolhapur

...Second Party

**CORAM :** D. H. Deshmukh, Presiding Officer**Appearances:**

Shri R. M. Samudra. Advocate for First Party

Shri Omkar Nevagi, Advocate for Second Party

**AWARD**

(Date: 30-08-2014)

This is a reference made by Government of India, Ministry of Labour, New Delhi, for adjudication of industrial dispute between The Bank of Baroda ("the first party" for short) and Shri Balasaheb Erandole ("the second party" for short). The dispute referred is thus :-

"Whether the action of management of Bank of Baroda, Kolhapur in terminating the services of Shri Babasaheb Erandole w.e.f January 2007 (as claimed by the applicant) is legal and justified ? If not, to what relief the concerned workman is entitled to ?"

2. The second party has contended that he was working with the first party in Shahupuri Branch, at Kolhapur since 1990 as a Peon. He worked continuously till 2007, when his services were terminated. The second party had allegedly applied for the post of Peon pursuant to the advertisement in the newspaper Loksatta, and accordingly, he was appointed, and he started working with Shahupuri Branch since 1992. In the year 1990 and 1991, the second party allegedly worked in Shivaji Chowk Branch and Shahupuri Branch at Kolhapur for 37 and 80 days respectively. The service record was clean. The post was permanent. There was ample work available. Services were abruptly terminated w.e.f. 1-2-2007 after 15 years' long service, that too without assigning any reason, and without giving any notice. The second party had worked for 240 days in each year as per the details shown in Para. 6 in the written statement.

3. The second party has further, contended that there was no practice as such, to employ a person as a casual or daily wager. The second party was, however, continued to deprive him of the benefits of permanency. The provisions of the settlements were not complied with. The second party was never informed that the services were terminated, as he was not sponsored by the Employment Exchange. The first party stated so only before Regional Labour Commissioner. The second party has then stated in the amended pleadings that after the termination, he is unemployed, and could not get job. Similarly, at the time of termination, he became age barred for other employments etc. The second party has prayed for reinstatement with continuity of service, and full back wages.

4. The first party has resisted the claim, denying the adverse allegations. According to the first party, the Hon'ble Supreme Court in Appeal (Civil) No. 3395-3612 of 1999 and SLP(C) No. 9103-9105 of 2001 has held that no appointments could be made by the Government, and its instrumentalities in contravention of statutory rules, and even if any services are rendered under the illegal appointment, the same do not entitle for absorption in regular services. The contention of the first party is that

the second party was not employed in accordance with the rules, or by following the prescribed procedure. The second party has not stated that he was qualified to be appointed, or was appointed procedure. According to the first party, sometimes temporary and daily wagers are required to be engaged for exigency of work, but such appointees cannot be made permanent. The second party was not recruited by following the process prescribed, nor was sponsored by Employment Exchange. No appointment letter was given to him. He was engaged on daily wages, as and when the work was available. The first party had engaged him for a day, and he was disengaged automatically at the end of the day. Such disengagement was not retrenchment etc. Denying the adverse allegations, the first party has prayed for rejection of the claim.

5. The Issues and my findings thereon, are as follows :-

ISSUES	FINDINGS
1. Whether the action of management of first party in terminating the services of second party w.e.f. January 2007 is legal and justified?	No
2. If not, to what relief the second party workman is entitled?	Compensation
3. What Award ?	As per final award.

#### REASONS

6. I have gone through the record, including the written argument of the first party, and have heard the submissions made.

The second party has stated on oath that he had worked in at Shivaji Chowk and Shahupuri Branch, Kolhapur during 1990-91. He had applied for the post of Peon, which was advertised by the first party, and was selected. According to the second party, he worked as a Peon since 1990 till January 2007. He had completed 240 days. The Branch Manager was paying his salary on weekly basis on vouchers, and was making the entries to that effect in his personal diary. The second party was the permanent employee. He then stated about the inspection report produced on record. Services were orally without any notice or compensation from 1-2- 2007. The second party has stated about the letter dt.13-10-2006 of the first party, in which service period etc. is mentioned. The second party has stated that he is 47 years old, and could not get job despite efforts. The recruitment document produced with Exh.C-5, is not applicable to him.

7. In cross-examination, the second party has admitted that in advertisement, the candidates were required to submit education certificate, Employment Exchange Card, domicile/proof of residence from Gram Panchayat. He had applied to the bank along with the documents. The second party does not remember if he has got the copies of the

above documents. The second party was engaged on daily wage basis. He does not remember if the appointment letter was issued to him. Admittedly, there are only vouchers to show his services. The second party does not know English, though he had a subject of English upto 7th Std. According to the second party, Annexure to the letter dt.13-10-2007 is its part and parcel. The second party cannot tell how he got the confidential letter, which is produced on record. He also admit that he received the wages for the work performed by him.

8. The first party examined Shri J. K. Gandhi, Assistant General Manager. Gandhi has stated that he is Asstt. General Manager of Shahupuri Branch, Kolhapur since 18-6-2013. He is serving with the first party bank for last more than 36 years. Gandhi has gone through the available records with the Shahupuri Branch of the first party relating to instant dispute, and he is conversant with this case on the basis of record. According to Gandhi, the services of the second party were availed by the first party only as daily wage worker, and as and when the needed for the work which had arisen at the Shahupuri Branch of the first party bank, and he was paid proper wages. Services came to an end every day on which he was engaged .. The contract was only for the day. The provisions of the Barpartite Settlement are not applicable to him. He was not in continuous service. The bank has also policy guidelines, rules, and eligibility criteria for regular employment in bank service, which are circulated in all branches. Copy of the said guidelines is produced. The second party does not fulfill the eligibility criteria for regular employment. His name was not recommended by Employment Exchange. The second party is engaged in the dairy business, and is earning income from the said business. In short cross-examination, Gandhi denies that he does not know the facts of the case. The daily wagers vouchers are kept. He was shown letter dt.13-10-2006, and he denies the contents thereof. From local enquiry, he came to know about the occupation and earnings of the second party. Gandhi also admits that he had heard that the second party used to work intermittently since 1991-92.

9. On behalf of the first party, copy of decision of the Hon 'ble Supreme Court in Secretary, State of Karnataka & others Vs. Umadevi & others decided on 10-4-2006 is produced, on the proposition that for regular appointments in public employment, it is mandatory to follow the recruitment rules and process etc. Mr. Samudra, the learned counsel for the first party has submitted written argument. wherein he stated about Paras 2, 34 & 38 of the judgment cited about the non-application of the settlement, Sec. 2(oo) (bb) etc. I have gone through the written argument.

10. Mr. Nevagi, on the other hand, argued that if the bank claims to be a State, then the State is expected to act ideally. The letter dt.13-10-2006 was confronted on behalf

of the first party bank to the second party, during his cross-examination, and therefore, the said letter is required to be read in evidence. The details of working days given in that working letter, and the details taken of during inspection differ. This shows that the bank has suppressed the documents etc. According to Mr. Nevgi, the second party had worked continuously for several years, and was sent home unceremoniously, without complying with the provisions of law. Mr. Nevagi, the learned counsel specifically submitted that the second party should be given compensation, and in that regard, reliance was placed on Management of the Lakshmi Vilas Bank Ltd. Vs. Presiding Officer, Industrial Tribunal & Others (2013 IV LLJ 459 Madras H.C.) B.S.N.L. Vs. Bhurumal [2013(15) SCALE 131 S.C.], and The Divisional Forest Manager, FDCM Ltd. Vs. Shri Vinayak Kurne & Ors. [2011 (6) MhLJ 784 Bom. H.C.], on the proposition that industrial law should be given an interpretation, which would advance the beneficial purpose, and defeat the mischief.

11. The second party has produced inspection report with Exh. U -12, which is admitted. It is therefore, marked Exh. U -12A. Inspection report shows that vouchers were maintained by the first party bank, and the second party was paid on the voucher. The working days shown in the inspection report, are of the year 2000, 2002, 2003, 2005 & 2006. Admittedly, the second party was working since 1991-92, though intermittently as stated by witness of the first party bank. It is clear that the bank did not produce all the vouchers for inspection. This fact becomes clearer from the letter dt.22-2-2014, which is also admitted (Exh. U -17). This letter is a reply given to the second party under Right to Information Act. This letter gives information about working days. The letter states that record pertaining to 1990-1999 (except August 1999) is not available. In August 1999, the second party worked for 23 days as casual labourer. In 2000, the working days are 234, 2001 : 231 days, 2002 : 123 days, 2003 : 64 days, 2004 : 16 days, 2005 : 147 days & 2006 : 66 days. The letter of the first party itself indicates that the working days are much more than the working days reflected from the vouchers shown to the second party during inspection.

12. The second party has produced with Exh.U-16 a letter dt. 13-10-2006 written by Chief Manager of the First Party to the Assistant General Manager of the First Party at Panji Regional Office. The subject is information relating to the persons who worked 'on temporary or casual basis. Information in respect of second party is enclosed with that letter. The letter states about two persons, including the second party. It's annexure is a brief biodata of the person, containing, name of the second party, his date of birth, and other details which show that his name was registered with Employment Exchange. The work and conduct is shown as satisfactory. Nature of duties shown

are of a Peon. Now, coming to the working days, details are written in hand like other details of name etc. The period is from 1990 to 2006. In most of the years working days are more than 240. In 2005 the working days shown are 291. It is a confidential letter. How the second party got it is not clear, and he is also not able to tell the same. Second party has denied that the particulars of working days mentioned in the biodata/Annexure to that letter, were written by him. The second party, however, was not put any suggestion that the letter is fabricated or false. The first party bank had examined the Asstt. General Manager after the letter was produced on record. The said witness however, has not challenged or denied the said letter in his examination in chief.

13. Having regard to the facts and circumstances of the case, and the other evidence on record, I am inclined to place reliance on the letter dt.13-10-2006 as well as biodata/proforma annexed to it. The Bank was not able to produce original vouchers, or any other documents relating to attendance. The bank had received letter dt. 20 November, 2007, demanding reinstatement. The bank was aware of the dispute referred to this Tribunal. The bank was supposed to preserve the relevant record. The witness who is examined, was not in the concerned branch at the relevant time. He claims to have deposed on the basis of record.

14. Having regard to the material on record, I am inclined to hold that the second party had worked from 1990 till 31-1-2007, and his services were terminated from 1-2-2007. I also find that the second party had worked for more than 240 days in most of the year from 1990 to 2006. During the year immediately preceding the date of termination) the working days were 240 or more. The services were terminated without assigning any reason, and without complying with the provisions of Section 25-F of the I. D. Act. Admittedly, the second party was not given notice or compensation. Compliance of Section 25 F is a mandatory compliance. Having regard to such a long service in capacity of a Peon, it cannot be said that the engagement was only for one day, and every day service were terminated. Section 2(o)(bb) cannot be applied in this case.

15. The bank has produced recruitment criteria document with Exh.C-11. Apart from the educational and other qualification/ conditions, it appears that there is a some procedure for making recruitment on permanent basis. The second party was admittedly the daily wage. Had he been permanent employee, there would not have been occasion for him to raise a dispute. The first party is a Nationalized Bank. The employment in the first party is public employment. The second party has not been able to produce any document to show that he was appointed pursuant to the advertisement. or his appointment was



against a sanctioned post etc. There is no evidence of availability of sanctioned vacant post. Though the termination was illegal and unjustified, reinstatement with continuity of service and back wages, as claimed, would not be proper. The judgment in Umadevi's case will also be required to be kept in mind. Mr. Nevagi, the Learned Counsel for the second party was therefore, right in submitting that his client should be granted some compensation. According to Mr. Nevagi, Rs. 3,00,000/- would be proper compensation, as granted in BSNL case relied upon by him. In BSNL, the service period was about 15 years. The compensation granted was Rs. 3,00,000/-.

16. The Exh.U-12 A shows that the per day second party was paid Rs. 222/- in September 2006. The Second party was paid Rs. 209/- per day in October 2005. The termination was in January 2007. Considering the periodical rise in wages, it could be presumed that the wages paid in January 2007 could be around Rs. 250/- per day. Monthly wage comes to Rs.7500/-. Non-compliance of Section 25 F of I. D. Act renders the action of termination void ab-initio. Ordinarily, the second party would have been entitled to be reinstated with continuity of service, and at least some back wages. The second party appears to be in business of selling milk. The second party originally did not plead about non-employment & efforts etc. It was later amended. As I said, the reinstatement with consequential benefits is not desirable in the present case. Having regard to the approximate last drawn wages of Rs. 250/- per day, if the back wages are calculated, it would be more than six lakhs. Further, services of the second party can be presumed to have continued till today, and further, the service period since January 1992 will have to be taken into consideration for the purpose of retrenchment compensation. Such compensation for about 22 years along with one month's notice, would also be around Rs. 90,000/-. This is on the assumption that the daily wage was continued to Rs. 250/- per day. Further in all probabilities, the second party might have kept himself engaged in some work of business and earned some money. Having regard to the possibility of the second party having kept himself engaged, and earned something for all these years, and taking into consideration the facts and circumstances of the case, the compensation of Rs. 3 lakhs would be just and proper. This is a case, where departure from the normal rule of reinstatement with continuity of service and back wages, is required to be done. Having considered every thing, I proceed to pass the following award.

#### AWARD

The first party Bank of Baroda shall pay to the second party Shri Babasaheb Erandole, compensation of Rs. 3 lakhs on account of loss of employment/ service.

Date: 30-08-2014.

D. H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 449.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पुणे के पंचाट (संदर्भ संख्या 15/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[ सं. एल-12011/145/2006-आईआर (बी-II) ]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 449.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Pune as shown in the Annexure, in the Industrial Dispute between the management of Bank of India and their workmen, received by the Central Government on 02/02/2015.

[No. L-12011/145/2006-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE SHRID. H. DESHMUKH, INDUSTRIAL TRIBUNAL AT PUNE

#### Reference (IT) No. 15 of 2007

#### Between :

The Zonal Manager,  
Bank of India,  
1162/6, Shivajinagar,  
University Road,  
Pune - 411 005

...First Party

#### And

The Zonal Secretary,  
Bank of India Workers' Organisation,  
185, Shaniwar Peth,  
Pune - 411 030

...Second Party

#### ADVOCATES :

Shri H.D.Gokhale, Advocate for First Party

Shri R.P.Shaligram, Advocate for Second Party

#### AWARD

(Date : 01-08-2014)

This is a reference made by Government of India, Ministry of Labour, New Delhi, for adjudication of industrial dispute between The Bank of India, Shivajinagar, Pune ("the first party" for short) and Bank of India Workers' Organisation, Shaniwar Peth, Pune ("the second party")

for short). The demand referred to this Tribunal for adjudication is as to whether the action of the management of Bank of India, Pune in not regularising the services of Shri Anand Marne w.e.f. 31-1-2002 is legal and justified ? If not, to what relief the workman is entitled ?

2. The union has submitted a Statement of Claim at Exh.U-4, contending that Shri Anand Dnyaneshwar Marne (the concerned workman) is the member of the second party union. The first party bank is a Nationalized Bank, having branches all over India, and has employed near about 42000 employees. The concerned workman was employed with the first party as a badli sub-staff w.e.f. 1-12-1998, and he had continuously worked upto 31-1-2002 at Laxmi Road Branch of the first party. His duty hours were 9 am to 6 pm. He was lastly paid Rs.130/- per day. Though the bank was paying the wages to the concerned worker regularly, in order to deprive him of the benefits of regularisation, a paper arrangement was made, whereby the Branch Manager used to pay the wages in cash every week on voucher, and the same used to be debited to the P & L Miscellaneous charges as being amount reimbursed to the manager concerned towards coolie charges. It is contended that as per Shastri Award, Clause No.508, it was obligatory on the first party to appoint the concerned workman in the categories of permanent employee, probationer or part-time, etc., but the concerned workman was engaged as a badli sub-staff. The intention was malafide, and there was discrimination. In the past, first party had regularised the services of the badli employee who had worked for 240 days. The services of the concerned workmen were not regularised, which was illegal and unjustified.

3. The union has contended that during the conciliation proceeding, the first party had admitted that there were 11 vacancies of sub-staff, but only 7 were filled. The concerned workman was doing the indoor-outdoor work of subordinate staff, to serve drinking water, tea etc. to the members of the staff as well as to customers and visitors. He used to clean the office tables, sweep the entire branch premises, lavatory, bathroom etc. He also used to do movement of cash vouchers, cheques, registers from one counter to another. He used to give instruments for posting, checking, signing etc to different officials. He used to bring important stationery such as cash payment book, daily cash book from Stationery Department. The duties performed by him, are mentioned in the statement of claim. It is contended that continuous the concerned workman as temporary was an unfair labour practice under the Industrial Disputes Act. The services of the concerned workman were discontinued on 31-1-2002, though there was clear sanctioned vacancy. The termination was without giving notice and without notice pay or retrenchment compensation. In this way, the second party has prayed for regularisation of the concerned workman, and for giving all the benefits w.e.f. 1-12-1998. The second

party has also prayed for to grant any other relief in the interest of justice.

4. The first party has opposed the claim, denying the adverse allegations, including employment. According to the first party, there was no employer employee relationship between the first party and the concerned workman. There is no industrial dispute as contemplated in law. The second party has no locus-standi to raise the dispute. It is contended that the first party is a Nationalized Bank. The service conditions of the employees are governed by Banking Regulations Act. There are rules, regulations and procedures for regularisation. The concerned workman had not gone through the said procedure. The concerned workman cannot make back door entry in the bank, and thereby he cannot deprive other candidates. The concerned workman was never employed even as a casual or badli employee. The appointment as well as alleged termination is denied. According to the first party, the services of the concerned workman were utilized by the manager of the Laxmi Road Branch occasionally in his individual capacity as a self employed person, and, on as and when required basis. The concerned workman was paid by the concerned manager on per day basis, and the same was not like salary paid to the regular staff. The first party has denied that the service period was three years and two months as alleged. According to the first party, there cannot be automatic absorption in service. There are rules laid down even by the Reserve Bank, which are binding. Denying the adverse allegations, the first party has prayed for rejection of the claim.

5. The issues and my findings thereon, are as follows :-

ISSUES	FINDINGS
1. Whether Shri Anand Dnyaneshwar Marne is entitled to be regularised in services w.e.f. 31-1-2002 ?	Yes
2. Whether the demand of the second party of regularising the services of Anand D. Marne, is legal and justified ?	Yes
3. What Award ?	As per final award.

#### REASONS

6. Only the second party has adduced oral as well as the documentary evidence. I have gone through the record, and have heard Mr. Shaligram and Mr. Gokhale, the learned counsels for the parties.

The second party has examined the concerned workman as well as the General Secretary of the union. The concerned workman, in his affidavit, has stated every

thing that is pleaded. The affidavit indicates that the first party is a Nationalized Bank having its branches all over India. The second party union is functioning in the first party since October 1967, and the concerned workman is its member. There are about 42000 employees in the bank. The concerned workman was working with the first party as badli sub-staff since 1-12-1998 continuously till 31-1-2002 at Laxmi Road Branch. His duty hours were 9.00 a.m. to 6.00 a.m. His services were discontinued w.e.f. 31-1-2002. His last drawn wages were Rs. 130/- per day. Though the bank was paying wages regularly, in order to deprive him of the benefits of regularisation, the bank made paper arrangement. The Branch Manager used to pay the wages in cash to him every week on the voucher, and the expenses was debited to P & L Miscellaneous Charges Account shown as reimbursed to the manager towards the coolie charges. The workman had worked uninterruptedly and continuously for three years & two months. The workman stated about Clause 508 of the Shastri Award. He had worked for more than 240 days. He also stated that in the conciliation proceedings of 11-7-2006, the first party bank had admitted that actual working sub-staff were seven as against the eleven vacancies. The concerned workman stated about the nature of his duties which include indoor and outdoor duties, serving water, sweeping the entire branch premises, cleaning lavatories, movement of cash vouchers, cheques, registers etc from one counter to another counter, giving instrument for posting, checking, signing etc. to different officials, bringing important stationery from the Stationery Department etc. Duties which are pleaded in the statement of claim are stated in the affidavit. The concerned workman stated about the notice of production of documents, and failure of the bank to produce the documents. He has stated about the documents Exh.U-6. Further that his services were terminated without any notice, and without paying any compensation, and thereby committing breach of Section 25 F. The concerned workman deposed as to the documents produced.

In cross-examination, he admits that his father was employed with the bank as a Peon, and he died while in service. His mother gets pension. The workman had applied for appointment on compassionate ground, but that application was disallowed. He had requested the bank to provide him the work as and when the same available. He denies that the bank used to call him by telephone whenever the work was available. He was not required to sign the muster roll of the bank. The vouchers did not show payment for more than a month. The workman had filed Writ Petition in 2001, but it was disposed of etc.

7. The second witness examined by the union is Shri Joshi, the Zonal Secretary. Joshi in his affidavit also stated every thing that is stated by the concerned workman. In cross-examination, Joshi has clarified that the union did not take steps immediately because the union was waiting

for the response from the bank. Joshi does not have any other document to show completion of more than 240 days' service of the concerned workman. Joshi denies the suggestion that he did not take up the dispute for a long time because he knew that the concerned workman had not worked for 240 days.

8. By notice Exh.U-18, the second party had called for a number of documents from the first party bank. The documents included order of the High Court, demand reference, pursis filed in Reference 2/63 of 1992, settlement, vouchers, minutes of the conciliation proceeding, etc., and order was passed to produce the available documents. The Asstt. General Manager of the bank filed affidavit at Exh.C-12 stating that the documents are very old, and are not preserved. The second party has produced the copy of the award of C.G.I.T., Mumbai in Reference No.41 of 1990 between the first party bank and some other workman. The said workman appears to have worked as badli employee, and the award was made to regularise the services. The second party has produced certain documents with Exh.U-6. The witness has deposed as to those documents. In-fact, the document at Sr.No.1, 8, 9 and 11 to 17 are admitted by the first party. The first document is a copy of order of Hon'ble High Court, which indicates that the concerned workman had initially filed a Writ Petition No.559 of 2002 before the High Court, claiming absorption in permanent service. Thereafter, on 25-8-2005 the writ petition was disposed of, with liberty to the concerned workman to take appropriate remedial measures in relation to his termination effected during the pendency of the petition. Before that, Hon'ble High Court had passed an order on 29-1-2002, observing that the concerned workman was working as a sub-staff with the first party bank, and therefore, prayer for interim relief was rejected. However, the concerned workman was given liberty to approach the High Court as and when his service would be terminated. After disposal of the writ petition, in August 2005, the union raised the demand of regularisation of the services of the concerned workman. The other documents include minutes of the conciliation proceeding. The concerned workman deposed as to the said documents. Then, there is a document dt.25-2-1988 about some understanding with the federation of the union regarding absorption/deployment of badli Sepoys. Then, there is a Inter Office Memorandum dt.28-12-2001 given by the first party bank. Head Office of the Bank called for information about the number of casual sepoy from approved panel, who had completed 240 days in a block of 12 months, and number of casual safai karmachari not from approved panel, who had completed 240 days. Then, there is appointment letter dt.15-5-1998 given to Shri R. C. Gaikwad by the first party bank. The appointment letter indicates that Gaikwad was initially appointed as part time. Thereafter, there was a settlement in the conciliation proceedings, and his appointment was converted into full time Sweeper-cum-

Sepoy. The document makes it clear that on 9-6-1991 Gaikwad was taken in regular services. Then, there are xerox copies of the documents indicating in the name of some customers and the persons who worked, and there is a name of Anand, which in all the probabilities is the concerned workman. Then, there are certain documents like inter office memo, memos/letters, indent, etc of the first party bank. All these documents indicate that the first party bank had availed of the services of the concerned workman for official working in the bank from time to time. The concerned workman was sent as a representative or authorized person of the bank to collect stationery etc from time to time. Then, there are few vouchers which indicate that the amounts paid to the concerned workman were shown as reimbursed to the concerned Manager. Now, it is interesting to note that the first voucher reimbursed the expenditure incurred by Shri J. D. Pradhan, Chief Manager. There is another voucher about reimbursement of the expenditure of Shri Agarwal for getting extra work done from outside person. Then, there is another voucher about reimbursement of expenditure of Chief Manager Mr. Gore, for getting extra work done from outside person. Then the voucher dt.19-7-2001 is about the reimbursement of the expenses incurred by the some other person. These vouchers indicate that reimbursement was done not to a particular manager but in the names of different persons who were officers or the managers. The evidence shows that the work performed by the concerned workman was the work of the bank, and not the personal work of the concerned managers. The method of payment by way of reimbursement can really be said to be paper arrangement, as pleaded and stated in the evidence by the concerned workman.

9. Then, there are minutes of the conciliation proceeding in case of the concerned workman. In that minutes, the concerned workman had demanded the documents, and the first party had, at that time i.e. on 12-7-2006 stated that there were no document available. The first party also clarified at that time that there was sanctioned strength of 11 sub-staff but actually 7 persons were working. The second party has produced membership receipts and the recruitment policy etc., which are at Exh. U-23. The two receipts establish the fact that the concerned workman was the member of the second party union. The recruitment policy indicates that on 29-7-2013 the zonal office of the first party had decided to fill up 40 vacancies of Sepoys in Subordinate Staff Cadre. There is mention about the age limit, and further that the minimum period of 240 days should have been completed till 7-5-2012. This was for casual workers.

10. By Exh.U-25, the second party had called for the ledger and the monthly statements BR 39/40 showing details of payment made to Marne during the period 1-12-1998 to 31-1-2002. The first party has filed an affidavit Exh.C-12, stating that the documents are relating to very

old period, and therefore, are not preserved. The second party has filed copy of policy of first party as maintenance and preservation of old records with Exh.U-29. It is an admitted document, and therefore, marked Exh.U-29A. The said document indicates that even according to the first party, the documents shall not be considered for destruction irrespective of their age where suits have been filed/legal action is pending.

11. Mr. Gokhale, the learned counsel for the first party referred to Kerala Solvent Extractions Ltd. Vs. A. Unnikrishnan & Anr., 1994 II LLJ Pg. 888 SC. I have gone through the judgment.

12. Having considered every thing I find very clearly that the concerned workman had served with the bank, and not any individual persons during 1998 to January 2002. The workman had produced the documents, which were available with him. The workman had tried to call for the documents from the Bank on two occasions. The first party, however, has contended that the documents are not preserved because they are old. The second party had called for the documents pertaining to the services of the concerned workman during conciliation proceedings, way back in July 2006. At that time also, the bank had said the same thing that the documents were not available. The service period alleged is 1-12-1998 to 31-1-2002. The concerned workman had filed the writ petition in the year 2002, or rather in the beginning of the year 2002, claiming absorption in service, and the first party bank had appeared in the said writ petition. There was an interim order passed on 29-1-2002 by the High Court. The High Court matter was pending since January 2002 till 2005, when the petition was disposed of with liberty to take out appropriate proceedings as remedial measure since services were already terminated. In view of the pending litigation, firstly before High Court, then before Conciliation Officer, then before this Tribunal since 2007. The first party could not and ought not to have destroyed the record. Their own rules of preservation of the old record indicates that the record is required to be preserved where suit or legal action is pending.

13. The concerned workman and the Union Secretary have stated on oath regarding continuous service of 3 years and two months, and completion of 240 days etc. The available documents are produced. The documents in the custody of the first party are not forth coming. The first party has not examined any witness. The entire evidence of the second party is unshaken and totally un rebutted. The documents produced indicate that there is or there was at the relevant time, a policy or practice to take in regular service badlis or casual employees, who worked for 240 days or more. Even in the last year, there was appointment on regular basis of casual workers who had put into 240 days. The concerned workman may not have signed muster roll, or might have been paid on



vouchers. The fact remains that he was paid lastly @ Rs.130/- per day, and he had performed the work of the bank continuously from 1-12-1998 till 31-1-2002, when his services were terminated without giving any notice, and without payment of retrenchment compensation. Termination was in violation of Section 25-F of Industrial Disputes Act. The termination was also unjustified. Initially, the Hon'ble High Court did not give any interim relief because the concerned workman was already in employment. The Hon'ble High Court had observed that the concerned workman would be at liberty to approach the High Court, as and when his services would be sought to be terminated. Thereafter, the termination took place, and the petition was disposed of, with liberty, as said herein above.

14. The concerned workman had applied for appointment on compassionate ground, and that request was not acceded to. His mother is getting pension from the first party on account of death of father of the concerned workman. All that is not relevant in so far as the present claim is concerned. In my view, the dispute as referred, includes the issue relating to termination also. The concerned workman had worked for more than 240 days in the bank at Pune. He was continued as temporary or badli, which is an unfair labour practice under I. D. Act. Then the bank is an establishment where large number of employees were employed. The Model Standing Orders would be applicable. The Model Standing Orders entitle the workman to permanency after 240 days. The concerned workman was entitled to be appointed on regular basis, or absorbed in permanent services. But instead, his services were terminated illegally & unjustifiably. The concerned workman was entitled to be absorbed in permanent service of the bank w.e.f. 31-1-2002. The concerned workman had not actually worked with the bank after 2002. The concerned workman has not pleaded nor proved that he is unemployed since 2002. There is no pleading or evidence that the concerned workman had been unemployed despite efforts. The first party is the public sector bank. Having regard to all these aspects, I am not inclined to grant the benefit of actual receipt of back wages, or other monetary benefits for the past period. The concerned workman shall be made permanent in any suitable post in the category of sub-staff w.e.f. 31-1-2002. His wages and other service conditions shall be fixed treating the appointment as permanent appointment w.e.f. 31-1-2002. The concerned workman shall not be entitled to arrears of wages for the entire period from 31-1-2002 till today. The wages based on the fixation considering the appointment of 31-3-2002, shall be payable from today i.e. from 1-8-2014. For the service purposes, the date of appointment shall be treated as 31-1-2002. It is needless to state that in order to give permanent appointment, the concerned workman shall have to be reinstated from the date of appointment with permanency w.e.f. 31-1-2002. Having considered every thing, I conclude with the following award .

## AWARD

The workman Shri Anand Dnyaneshwar Marne shall be absorbed in services of the first party bank in a suitable post equivalent to the category of sub-staff w.e.f. 31-1-2002, and paid wages etc, as said herein above.

Date : 01-08-2014.

D. H. DESHMUKH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 450.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या 45/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/34/2013-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 450.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/34/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

## ANNEXURE

### BEFORE SHRI J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/45/2013

Date: 19.02.2015.

- Party No.1 (a) : The Regional Manager,  
State Bank of India,  
Regional Office,  
Station Road, Nagpur.
- (b) : The Branch Manager,  
State Bank of India,  
Industrial Estate Branch,  
Warora naka square,  
Nagpur Road,  
Chandrapur(M.S.)

## Versus

- Party No. 2 : Mohan Vasantrao Waghade,  
R/o Babupeth, Ward No. 2,  
Post-babupeth,  
Dist. Chandrapur.

**AWARD**

(Dated: 19th February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of State Bank of India and their workman, Shri Mohan Waghade, for adjudication, as per letter No. L-12012/34/2013-IR (B-I) dated 08.08.2013, with the following schedule:-

"Whether the action of the management of State Bank of India through regional Manager, Station Road, Nagpur and the Branch manager, SBI, Industrial Estate branch, Chandrapur in terminating services and ignoring Shri Mohan Waghade for absorption in services of Bank is legal and justified? To what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Mohan Vasantrao Waghade, ('the workman' in short), filed the statement of claim and the management of State Bank of India ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that on 07.12.1995, he was orally appointed by the party No.1 as a daily wager at Industrial Branch at Chandrapur and he was doing all the duties of a messenger/peon and arranging records and stationary and initially he was getting Rs.25/- per day, which was subsequently enhanced to Rs.40/- per day and after working for some days, artificial break was given and again he was given work on 07.02.1996 and he worked till 10.03.1997 and completed more than 240 days of work and acquired permanency as per Rules and regulations and on 10.03.1997, all of a sudden, he was terminated from service by party No.1 without any reason and no notice or letter of termination was given to him by party no.1 at the time of termination of his services and he was also not paid the retrenchment compensation and his termination by party no.1 was without compliance of the mandatory provisions of section 25-F of the Act.

The further case of the workman is that after his termination, the services of five more employees were terminated by the party No.1 and therefore, he along with those five employees gave a notice to the party No.1 through their advocate on 17.04.1997 and party No.1 gave its reply on 21.05.1997, falsely claiming that compensation was given to him and termination of his service on 10.03.1997 was nothing but arbitrariness and the is not sustainable in the eyes of law and the work which, he was doing is perennial in nature and available with party no.1

and as he worked continuously from 07.12.1995 to 10.03.1997 and completed more than 240 days of work, he was entitled to the status of protected employee and therefore, party no.1 ought to have followed the provisions of Chapter 31 of the regulations applicable to the employees of the party No.1 and there was also violation of the provisions of section 25-g of the Act by the party No.1, as one Shri Rajesh Reddy, who was appointed in October, 1996 i.e. subsequent to his appointment was retain by party No.1, while he was terminated from service.

It is further pleaded by the workman that the service conditions of the employees of party no.1 are governed by the provisions of Sastry Award and according to section IV, Chapter XXV of the said Award, if retrenchment of more than five employees is to be effected at a time, then giving of individual notice of two months is mandatory along with the statement of reason for such proposed action, but party No.1 even though in all terminated six employees including himself, individual notice of two months along with reasons was not given by the party no.1 and his services were terminated orally and as his termination was illegal, he is entitled for reinstatement in service with continuity and full back wages.

3. Party no.1, after denying all the adverse allegations made in the statement of claim, in the written statement has pleaded inter-alia that the workman was engaged purely in casual/daily wages basis in casual vacancies, intermittently, but without continuity in service, due to administrative exigencies for doing sundry work, such as cleaning the Bank premises and filling water etc. and such engagement of the workman in casual vacancies was made only during business hours, when the regular employees were on leave and he had not worked for 240 days in any calendar year or in the twelve calendar months preceding the date of his disengagement and even in his own admission, the workman worked for 215 days in the preceding 12 months and he is not entitled to any relief.

It is further pleaded by the party No.1 that the workman was orally appointed on 07.12.1995 at Chandrapur Industrial Estate branch on daily wages basis for doing sundry work and not for doing all the work of a messenger or peon and he was discontinued from 07.02.1996 to 31.05.1996 and he was again employed w.e.f. 01.06.1996 and the engagement of the workman was made by the branch Manager, who had/has no authority to appoint any person in such category and such engagement was illegal/irregular and impermissible under the Rules of the Bank and such illegality cannot be perpetuated for indefinite period and the workman cannot claim permanency in service, as his engagement is void ab initio and the workman has no enforceable right for reinstatement, regularization or permanent appointment and he is not entitled to any relief.

4. No rejoinder has been filed by the workman.

5. To prove his case, the workman has examined himself as a witness, besides placing reliance on the documentary evidence.

No oral evidence has been adduced by the party No.1.

6. In his examination in chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that he was engaged in the bank temporarily on daily wages basis and he was engaged by the Bank as and when required and he did not work for 240 days in the preceding 12 calendar months of 10.03.1997 or in any calendar year. He has further admitted that he has not produced any document to show that Shri Rajesh Reddy was engaged by the Bank after his engagement and Rajesh Reddy is not working in the Bank and he did not go through the process of selection of sub staff as provided in the Rules of the bank.

7. At the time of argument, the learned advocates for the parties reiterated the facts mentioned in the statement of claim and written statement respectively.

In support of the submissions, the learned advocate for the party no.1 placed reliance on the decisions reported in AIR 2006-1806 (Secretary, State of Karnatak Vs. Umadevi), AIR 1996 SC-1565 (State of Himachal Pradesh Vs. Suresh Kumar) and 2007 I CLR-48 (Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen)

8. The claim of the workman is that he was working with the party no.1 from 07.12.1995 to 10.03.1997 and he had completed 240 days of work and he was entitled for regularization in service, but he was orally terminated from services on 10.03.1997 without compliance of the provisions of sections 25-F and 25-G of the Act.

The party no.1 has denied the claim of the workman and has taken the plea that the workman did not complete 240 days of work in the preceding 12 months of 10.03.1997 or in any calendar year and as such, there was no question of compliance of the provisions of sections 25-F and 25-G of the Act.

9. Before entering into the arena of merit of the case, in view of the stands taken by the parties, I think it apposite to mention about the principles enunciated by the Hon'ble Apex court regarding the application of provisions of section 25-B and 25-F of the Act. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Supra) have held that:-

“Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of “Continuous Service”

need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words “for every completed year of continuous service” has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B”.

10. In the decision reported in AIR 1981 SC-1253 (Supra), the Hon'ble Apex Court have held that,

“Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression “continuous”. Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A”.

11. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (Supra) has held that:

“Industrial Disputes Act (14 of 1947) S.25-F, 10-Retrenchment compensation-Termination of services without payment of -Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination. Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had

worked for 240 days in a year preceding his termination.”

12. In the judgment reported in (2006) 1 SCC-106(supra), the Hon’ble Apex Court have held that :-

“Labour Law-Industrial disputes Act, 1947-Ss. 25-F, 25-B, 11 and 10-Requirement of 240 days’ continuous service-Onus to prove-Evidence to be led-Applicability of Evidence Act, 1872-Held burden of proof lies on workman.-It is for the workman to adduce cogent evidence, both oral and documentary-Mere affidavits or self serving statements made by the workman will not suffice-Evidence Act not applicable to proceedings under section 10 I.D.Act.”

13. So, it is clear from the principles enunciated by the Hon’ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary for the workman by leading cogent evidence, both oral and documentary to prove that in fact he had worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon’ble Apex Court, now, the present case at hand is to be considered.

14. In support of his claim, except his own evidence on affidavit, the workman has filed the documents, Exts W-IV and W-V. Ext. W-IV shows that the workman had worked for 215 days in the preceding 12 calendar months of the date of his termination i.e. 10.03.1997. Moreover, the workman himself has admitted that he did not work for 240 days in the preceding 12 calendar months of 10.03.1997. As the workman has failed to prove that in fact he had worked for 240 days in the preceding 12 calendar months of 10.03.1997, the provisions of section 25-F of the Act are not applicable to his case.

Though, the workman has mentioned that there was violation of the provisions of section 25-G of the Act, he has not adduced any evidence to show that Shri Rajesh Reddy was engaged by party No.1 on daily wages for working in the branch after his engagement and that Shri Reddy was retain in the service, even though he was terminated from service. So, it cannot be said that there was violation of the provisions of section 25-G of the Act. Hence, it is ordered:-

#### ORDER

The action of the management of State Bank of India through Regional Manager, Station Road, Nagpur and the Branch manager, SBI, Industrial Estate branch, Chandrapur in terminating services and ignoring Shri Mohan Waghade for absorption in services of Bank is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 451.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 100/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/3/2000-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 451.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 100/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/3/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/100/2000

Shri Gajraj Singh S/o Ratanlal,  
R/o 22, Chobdanpura,  
Bhopal

...Workman

#### Versus

Chief General Manager,  
State Bank of India,  
Local Head Office,  
Hoshangabad Road,  
Bhopal

...Management

#### AWARD

Passed on this 6th day of February, 2015

1. As per letter dated 31-5-00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/3/2000/IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India in terminating the services of Shri Gajraj Singh w.e.f. 6-1-96 is justified? If not, to what relief the workman is entitled for?”



2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3. Case of workman is after following selection process, he was appointed as messenger against vacant post on 2-6-81. His service record was good. That IInd party was giving intermittent break in work. On 6-4-96, his services were orally discontinued without assigning any reasons. He was not served with any chargesheet. No enquiry was conducted against him. Workman had completed more than 240 days continuous service during the intermittent years of his services. He was not paid retrenchment compensation. His services are terminated in violation of rules. Workman had submitted repeated representations. Applications requesting IInd party to reinstate in service were not considered. Workman is unemployed and facing hardships.

3. Workman further submits that after completion of six months service, he acquired status of regular employee as messenger. Instead of regularizing his services, he was illegally terminated. Workman raised dispute and prays to quash order of his termination. He also prays for his reinstatement with back wages.

4. IInd party submitted Written Statement in the matter denying claim of the workman. IInd party submits that workman was working from 2-6-81 on temporary basis. He had worked for 41 days in 1981, 65 days in 1995, 12 days in 1996, total working days of workman- 118 days. Workman was not continuously working. Bank had scheme for regularizing temporary labours working during the period 1-7-75 to 14-8-91. Workman had submitted application. He was all working only 41 days during 1975 to 14-8-91, 77 days after the cut off date. He was not found entitled for regularization. It is reiterated that workman had not completed 240 days continuous service during any of the year. Workman was not engaged after completing selection process. Workman was not appointed as regular employee. There is no question of terminating his services. It is submitted that services of workman ended at end of the day. He was at liberty to working at any other place. Workman was not entitled to work as workman has not completed 240 days service during any of the year. There was no question of paying retrenchment compensation or compliance of Section 25-F of ID Act. Workman was not found entitled for regularization as per the scheme executed by Bank. On all such contentions, IInd party submits that claim of workman cannot be allowed.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |             |
|--|-------------|
| (i) Whether the action of the management of State Bank of India in terminating the services of Shri Gajraj Singh w.e.f. 6-1-96 is justified? | In Negative |
|--|-------------|

- |   |                      |
|---|----------------------|
| (ii) If not, what relief the workman is entitled to?" | As per final orders. |
|---|----------------------|

### REASONS

6. The terms of reference pertains to legality of termination of services of workman from 6-1-96. Denial of regularization of service of Ist party workman is not referred. Workman filed affidavit of his evidence. Workman has stated that from 2-6-81, he was working on vacant post of messenger. He was continuously working. He relies certificate of experience. To avoid regularization of workman, break was given to him. That in the year 1989 as per settlement with Union for regularization of daily wage employees he was called for interview. His name was appearing at Sl. No. 782 of the select list but workman was not absorbed. Workman further says from 24-12-93, he was engaged on daily wages. He was working till 6-1-96. Thereafter he was discontinued without notice. He was not paid retrenchment compensation. In his cross-examination, workman says his name was not sponsored through Employment Exchange. Again says in 1981, his name was sent through Employment Exchange to the Bank. He did not recollect registration No. in Employment office. Employment Exchange card is not produced by him. He was called for interview. He was interviewed in 1989. Thereafter he was working in the Bank in 1994-95, 96. He was unable to tell his working days during each of the year. He requested letter from Bank prior to 1994. Date of his appointment could not be told by workman. He was unable to tell working days of workman in 1982.

7. Management's witness Shri P.Sabu filed affidavit of his evidence supporting full contentions of IInd party in written Statement. That in 1981, workman worked for 81 days in 95- 65 days, 96- 12 days. Workman was engaged on daily wages as per exigencies. As per the agreement between Union and management, workman was called for interview but he was not found suitable for absorption as he had worked only for 44 days during 1975 to August 91. In his cross-examination, witness of management denies that in 1981, workman was appointed. Appointment letter was not issued to workman. The witness of management further says w.r.t. facts stated in Para-7 of his affidavit, he could produce documents i.e. the documents relating to working days of workman during 1975 to August 1991 and 94 to 96. Those documents are not produced. Ist party workman has submitted application for production of documents about attendance register during the period 2-6-81 to 7-7-81 and 93 to 96. Documents are not produced. Documents relating to the selection and interview are also not produced. Workman has stated in his affidavit his name was appearing at Sl.No.782. workman has not produced any documents regarding the same. Term of reference doesnot include denial of regularization to the workman. The terms of reference is restricted to legality of termination of workman. Evidence of workman is not

corroborated by evidence of any co-employee. Any appointment letter is not produced. Documents Exhibit W-1 produced by workman is certificate of disability issued on 9-8-10 by Medical Board. Exhibit W-2 is certificate of experience, the working period is shown 2-6-81 to 17-7-81. Exhibit W-3 is letter dated 24-12-93 by Assistant General Manager to contact him within 5 days. The uncorroborated evidence of workman cannot be accepted that he had completed 240 days continuous service during any of the year from 1981 to 1996. Therefore workman cannot be allowed protection of Section 25-F of ID Act. When workman has not completed 240 days continuous service during any of the year, the termination of his services cannot be said illegal for violation of Section 25-F. Learned counsel for workman Miss R.Nair relies on ratio held in

“Case of Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda reported in AIR-2010 SC-1236. Their Lordship dealing with burden of proof about completion of 240 days continuous service held workman hired on daily wage basis, he would have difficulty in having access to all official documents, muster rolls etc. Workman deposed that he worked for 240 days, burden shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.”

8. Management has not produced documents despite the management's witness in his cross-examination says that the documents can be produced. After workman was interviewed, he was engaged on daily wages during the year 1994-96. Workman cannot have access to the muster roll or documents about payments of wages to him. Management has withheld those documents therefore the evidence of workman cannot be disbelieved that he completed 240 days service after he was engaged during 94 to 96. Workman was not paid retrenchment compensation. No notice was issued to him. The termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

9. **Point No. 2-** Workman was initially engaged for 41 days in 1981. He was called for interview in 1989. Workman was engaged on daily wages during 94 to 96. Considering short span of working of workman for about 2 years, workman cannot be allowed reinstatement with back wages. In my considered view, compensation Rs. 50,000/- would be appropriate. Accordingly I record my finding in Point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India in terminating the services of Shri Gajraj Singh w.e.f. 6-1-96 is not proper.
- (2) IInd party is directed to pay compensation Rs.50,000/- within 30 days from the date of publication of award.

In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 452.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 104/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/18/2003-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 452.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 104/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/18/2003-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/104/03

Shri Vishwas Kumar Sharma,  
R-589, Mahalakshmi Nagar, Ring Road,  
Near Bombay Hospital,  
Indore (MP)

...Workman

#### Versus

General Manager (Operations),  
State Bank of Indore,  
Head Office, 5, Yeshwant Niwas Road,  
Indore

...Management

#### AWARD

Passed on this 30th day of January, 2015

1. As per letter dated 30-5-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/18/2003-IR(B-I). The dispute under reference relates to :

“ Whether the action of the management of Asstt. General Manager-I, State Bank of Indore, Indore in

dismissing the services of Shri Vishwas Kumar Sharma w.e.f. April 99 is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 5 to 15. Case of Ist party is that he was working as Audit Assistant in the IInd party Bank. Chargesheet was issued to him for the allegation that he misbehaved with customer Mohd Yunus Khan. On 15-10-97, he misbehaved with Head Cashier Mrs. Swarupa Rani asking objectionable questions to her. That he submitted a forged petrol bill of Rs. 120/- to Branch Manager. That he denied charges against him. He was falsely implicated with ulterior motive. DE was conducted against him. Statements of complainant Mohd Yunus and Smt. Swarupa Rani had not identified his voice as per her cross-examination. The incident was not reported to police though offence was cognizable. The copies of statements of both complainants are relied. That Mohd Yunus had dispute with workman w.r.t. some money matters. It is submitted that enquiry was not properly conducted. Witnesses Mahesh, Ram Krishna, Giri, Prem Kumar, Smt. Saraswati and Sisodia were not examined in Enquiry proceedings. Enquiry is vitiated. That Enquiry Officer found Sl.No.3 not proved only charge No.1,2 were proved. Workman submits that enquiry was conducted in short manner. Enquiry is vitiated. The findings of Enquiry Officer are perverse. The punishment of dismissal is illegal. Appeal preferred by workman was mechanically disposed without offering him hearing. That Enquiry Officer was witness to the incident. He should not have been appointed as Enquiry Officer. It resulted in miscarriage of justice, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 83/1 to 83/9. Claim of workman is opposed. IInd party submits that workman was appointed in clerical cadre. In 96-97, he was posted as Audit Assistant. During course of audit of Sanyogitaganj obranch, Indore and Hyderabad branch, workman had committed alleged misconduct abusing the customer misbehaving with head cashier Swarupa Rani and produced forged bill. Charge sheet was issued to workman for misconduct under para-19.5.C of Bipartite settlement of 1966. Workman submitted reply on 4-12-97 was not found satisfactory. Enquiry Officer Shri S.R.Bhardwaj was appointed. Management Representative was appointed to Shri R.S.Pareek. Enquiry was conducted giving opportunity of defence to workman. workman was provided Defence representative. Enquiry Officer submitted his report after showcause notice. The punishment of dismissal from service was imposed on workman. punishment is proper.

4. IInd party further submits that workman had claimed that he belongs to SC- Nagarchi caste but his claim of caste was found false after enquiry by District Magistrate.

Workman belong to OBC. On such ground, IInd party submits that reference be answered in its favour.

5. Ist party workman submitted rejoinder at Page 9/1 to 9/5 reiterating his contentions in statement of claim.

6. As per order dated 14-9-2010, my predecessor found enquiry conducted against workman is proper and legal. Considering order on preliminary issue and pleadings between parties, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                     |
|--|---------------------|
| (i) Whether the misconduct alleged against workman is proved from evidence in Enquiry proceedings? | In Affirmative      |
| (ii) Whether the punishment of dismissal imposed against workman is proper and legal?              | In Negative         |
| (ii) If not, what relief the workman is entitled to?"  | As per final order. |

### REASONS

7. Enquiry conducted against workman is found legal and proper. Question remains as to whether misconduct alleged are proved from evidence in Enquiry Proceedings? For deciding above questions, evidence in Enquiry Proceedings needs to be considered. During course of argument, learned counsel for IInd party Shri Rajnish Gupta pointed out my attention to charge sheet issued to workman related to abuses given by workman to Mohd. Yunus Khan and misconduct of indecent behavior with Mrs Swarupa Rani, Head Cashier. Enquiry Officer had held Charge No.3 related to false bill is not proved. The statement of management's witness Yunus Khan at Page 23 to 31 shows that Yunus Khan has supported the management that on 10-10-97 around 1.20 PM, when he come to branch for enquiry of his accounts, he was called by Shri H.C.Kabia in his cabin. Workman had come and asked why witness was sitting in chair, he should be driven out. Workman has abused in name of his mother, sister in indecent language. Workman was crying the witness should be driven out. He also assaulted him holding belt in his hand. Workman while disorderly behaving was also pulling him. when Bank security guard came there, workman holding his gun was asking him, said witness be driven out otherwise he would kill him by firing the gun. The evidence of management's witness is not shattered in his cross-examination. Evidence in cross-examination of management's witness shows that workman had strained relations with him. workman was having strained relations with several neighbours etc.

8. At the time of argument, workman in person submitted that evidence of Ist party complainant is silent about abuses. No doubt the words uttered by workman

abusing management witness are not clearly stated but his evidence is clear about abusing the management's witness and repeatedly asking he should be driven out of the cabin. Witness of management Yusuf Khan was a customer visited the Bank for enquiry of his accounts. Management's witness Swarupa Rani in her statement at Page 33 to 35 says that the report Exhibit 7/3 bears her signature. She had given her statement. That the evidence of Swarupa Rani shows that on 17-10-97, she had given said statement. Workman had called her on telephone asking her whether she recognized her voice. He called him to the place near Santosh Theatre for talks with her. Workman had also told her that she suffered loss in her pay. She would manage restoration of her pay. However in her cross-examination, Swarupa Rani says she could not recognize voice of Vishwas Sharma. Her evidence that workman had told her to restore loss of pay is not settled in her cross-examination. Workman had also gone to her place. He evidence of those complainants is also supported by other witnesses. The findings of Enquiry Officer w.r.t. Charge No.1,2 are supported by evidence. The legal position is settled that the findings of Enquiry Officer cannot be interfered re-appreciating evidence as Appellate Authority therefore I donot find substance in argument advanced by workman. For the reasons discussed above, I record my finding in Point No.1 in Affirmative.

9. **Point No. 2-** The punishment of dismissal imposed on workman for charge No.1, 2. Evidence of management's witnesses shows that complainant Yusuf Khan had quarrels with him. He was residing in vicinity of his house. Workman was asking that Yusuf Khan should be driven out of the cabin. He also behaved disorderly and threatened to kill him. so far as evidence of Mrs. Swarupa Rani, Head Cashier is on lines that workman had talked with her. She was asked to come to the place near Santosh Theatre. Evidence of Smt. Swarupa Rani doesnot clearly state indecent words used by the workman. workman had offered to restore her loss of pay. It cannot be said indecent. Proved charge No.1,2 against Ist party doesnot indicate any serious act committed by workman causing any loss to the Bank. Certainly misbehaving with the customer of Bank and while working as Auditor's Assistant, unreasonable talks with head Cashier are acts of misconduct. Yusuf Khan reported incident to police, its outcome is not known. The evidence on record is not clear whether Mrs Swarupa Rani had submitted report to police. If all those circumstances are carefully considered, the punishment of dismissal from service which results in Civil Death would not be proportionate to the proved charges. Workman was working as Assistant. As per Written Statement of the IInd party, he joined service of Bank in 1984. He was dismissed from service on 27-3-95. Workman had completed service of about 15 years. While imposing punishment of dismissal, the length of service

was not taken into consideration. In my considered view, if circumstances disclosed from evidence discussed above are considered, the punishment of dismissal imposed against workman is excessive. The circumstances deserved that punishment of dismissal needs to be converted to compulsory retirement so that workman and dependent of his family are not deprived retiral benefits. Accordingly I record my finding in Point No.3.

10. In the result, award is passed as under:-

- (1) The action of the management of Asstt. General Manager-I, State Bank of Indore, Indore in dismissing the services of Shri Vishwas Kumar Sharma w.e.f. April 99 is not legal and justified.
- (2) Order of dismissal of Ist party workman is modified to compulsory retirement.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 453.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 188/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[ सं. एल-12012/110/95-आईआर (बी-1) ]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 453.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 188/96) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/110/95-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/188/96**

Shri Ravi Kumar Fekkar,  
Naya Para Durga Chowk,  
Baloda Bazar,  
Distt. Raipur (MP)

...Workman

**Versus**



Assistant General Manager,  
State Bank of India,  
Region-I, Shankar Nagar,  
Raipur (MP)

...Management

### AWARD

Passed on this 27th day of January, 2015

1. As per letter dated 1-10-96 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/110/95-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India in relation to their Balodabazar branch in terminating the services of Shri Ravi Kumar Fekkar, Messenger is justified? If not, to what relief the workman concerned is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 8/1 to 8/4. Case of workman is that he was appointed in Bank at Balodabazar branch as daily wage casual worker from 87 to 94. He was continuously working to the satisfaction of the management till 2-9-94. Sometimes in 1988 and 1993, he was discontinued for few days. He was taken back again. He appeared before interview. He claimed ignorance of the result of interview/ test. He not received any offer letter by management but he was continued in service. That management refused him employment from 3-9-94. His services were orally terminated without assigning reasons. That one Rajesh Sahu was appointed after termination of his service. He was working till date. The services of workman were terminated without notice. His request for reinstatement was not considered by the authorities. Workman reiterated that he completed continuous service more than 240 days during each of the year. His services were terminated by IInd party without notice. He was not paid retrenchment compensation. On such ground, workman prays for his reinstatement with consequential benefits.

3. IInd party filed Written Statement at Page 10/1 to 10/6 opposing relief claimed by workman. preliminary objection is raised that workman was engaged in Balodabazar Branch in temporary capacity as badly messenger/ watchman for 75 days as stop gap arrangement. That agreement was entered between management and SBI Staff Federation on 17-11-87. Applications were invited. Workman was called for interview but he could not be appointed against permanent post as his working days were less than other candidates. It is denied that workman was continuously working more than 240 days during each of the year. It is reiterated that engagement of workman on daily wages came to end every day. His discontinuation is covered under Section 2(oo)(bb) of ID Act. Violation of Section 25-F,

G, H is denied. IInd party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                     |
|--|---------------------|
| (i) Whether the action of the management of State Bank of India in relation to their Balodabazar branch in terminating the services of Shri Ravi Kumar Fekkar, Messenger is justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?”  | As per final order. |

### REASONS

5. Workman is challenging termination of service for violation of Section 25-F, G, H of ID Act. IInd party management denied all his material contentions. He submitted that workman not completed 240 days continuous service.

6. Workman filed affidavit covering his contentions in statement of claim that he completed 240 days service during each year 87 to 94 that sometimes in 1998 and 1993, his services were discontinued for some days. He appeared for interview for permanent absorption in Bank service but he was not knowing its result. Workman alleged violation of Section 25-F, G, H of ID Act. He also stated that after termination of his service, Rajesh Kumar Sahu was appointed. He was working till date. In his cross-examination, workman says appointment letter was not given to him. He received interview letter. He admits that he had worked for 42 days and 75 days as messenger. He was unable to tell how many days Jhalaram was working after termination of his service. He claims ignorance about qualifications of Jhalaram. W.r.t. Rajesh Kumar Sahu also, he claims ignorance about working period.

7. Management's witness Shri Tripatikar, S/o Late Brinda Bankar in his affidavit of evidence supported contentions of management that workman worked for 75 days from Jan 87 to Dec-87. Workman had not completed 240 days continuous service. Workman was interviewed as per Bipartite Settlement. Considering his working days were less than other candidates, he was not given permanent employment. The evidence on record clearly shows that workman was engaged as casual labour. There is no dispute that workman worked for 75 days in 1987. Management's witness in his cross-examination says that his affidavit of evidence is not based on personal information. Any documents are not produced about daily payment of wages. He was unable to tell how much wages were paid to workman every month. Bank has no documents about workman. After scrutiny of payment vouchers, it is found that workman worked for 75 days in 1987. He had seen those vouchers in 2007. He claims

ignorance about engagement of workman on contract basis. That he had seen payment vouchers for 1987. He admits that workman was working in Bank from 1987 to 1994. He claims ignorance about reply filed before ALC. The witness of management denied documents referred to him. He further claims ignorance about the documents relating to interview of workman. He claims ignorance whether workman was selected after interview. He claims ignorance about vacancy position in bank. The witness of management was unable to tell whether workman completed 240 days continuous service during 1990 to 1994. If evidence and witness of management is appreciated, the management's witness has no knowledge about workman completed 240 days continuous service of workman. The evidence and cross-examination of workman shows that he was engaged on daily wages, appointment letter was not given to him. Workman was called for interview as per settlement dated 17-11-87 but workman was not knowing result. The documents in that regard are not produced. Workman submitted application for production of documents. Document were not produced. Order was not passed on the application but it clearly reveals that documents were not produced by management, documents are withheld. The workman was not paid retrenchment compensation was paid, services were illegally terminated. The evidence on record shows that despite workman completed 240 days continuous service, his services were terminated in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

8. **Point No.2-** As per the evidence on record, workman was working with IInd party from 1987 to 1994 for about 7 years. His services are terminated in violation of Section 25-F as workman was engaged without following recruitment process, in my considered view, claim for reinstatement with back wages cannot be allowed. Compensation Rs. 1,50,000/- would be appropriate. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

(1) The action of the management of State Bank of India in relation to their Balodabazar branch in terminating the services of Shri Ravi Kumar Fekkar, Messenger is not proper.

(2) IInd party is directed to pay compensation Rs. 1,50,000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 454.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट

बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 192/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/203/2000-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 454.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 192/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/203/2000-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/192/2000

Shri Rajendra Ku. Raikwar,  
C/o Shri H.P. Khajuria,  
Asstt. General Secretary,  
Akhil Bhartiya Adhinasth Bank Karmchari Sangh,  
Central Office, Huzrat Pul  
Opp Ashoka Palace, Lashkar,  
Gwalior (MP)

...Workman

#### Versus

Dy. General Manager,  
State Bank of India,  
Divisional Office,  
Jayenderganj,  
Gwalior

...Management

#### AWARD

Passed on this 27th day of January, 2015

1. As per letter dated 16-24/10/00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12012/203/2000/IR(B-I). The dispute under reference relates to:

“Whether the action of the Dy. General Manager, State Bank of India, Zonal Office, Jyandraganj, Gwalior (MP) in terminating the services of Shri Rajendra Kumar Raikwar S/o Shri Tulsidas Raikwar w.e.f. 4-11-95 is legal and justified? If not, what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/4. Case of workman is that he was initially appointed as messenger from 1-11-84. He was continuously working till 4-11-95. He had completed more than 240 days continuous service during each of the year. His services were terminated without notice. Retrenchment compensation was not paid to him. His services are terminated in violation of Section 25-F. Provisions of Section 25-F, G, H of ID Act and Rule 77,78 were not followed. On such ground, workman prays for reinstatement with back wages.

3. IInd party filed Written Statement at Page 12/1 to 12/9. Case of IInd party is that Ist party workman was engaged as temporary messenger at Tikamgarh branch. During 1994-95, workman had completed 544 days. It is also contented that workman was engaged on contract basis as per exigencies. The dispute raised by workman is referred by Central Govt. It is submitted that workman had worked for 87 days in 1984. Workman was engaged on daily wages. He not completed 240 days continuous service. His services came to end at end of day. His dis-engagement is covered under Section 2(oo)(bb) of the Act. The Bank management had entered in agreement with Federation of employees. As per agreement dated 17-11-87, 16-7-88, 28-10-88, 9-1-91 with the Staff Federation. The employees discontinued after 1-7-75 to 31-7-88 were called for interview. Panel of selected candidate was prepared by the Bank. The previous temporary employees completing prescribed period of service were considered. The working days of workman were less than other candidates. He could not be absorbed in that service. It is reiterated that workman completed 87 days in 1984. He was called for interview as per Bipartite Settlement. He was found not eligible for permanent employment. Workman had not completed 240 days continuous service required under Section 25-F of ID Act. Termination of service is not violative of Section 25-F, G, H of ID Act. On such ground, IInd party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |   |                     |
|---|---------------------|
| (i) Whether the action of the Dy. General Manager, State Bank of India, Zonal Office, Jyandraganj, Gwalior (MP) in terminating the services of Shri Rajendra Kumar Raikwar S/o Shri Tulsidas Raikwar w.e.f. 4-11-95 is legal and justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?"   | As per final order. |

## REASONS

5. Workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act. Management denied material contentions of workman. Affidavit of evidence of workman covers material contentions in statement of claim that he was engaged as messenger from 1-11-84. He was continuously working till 4-11-95. His services were terminated without notice. Retrenchment compensation was not paid to him. He completed 240 days continuous service during each of the year. His services are terminated illegally. In his cross-examination, workman says he was orally engaged in the Bank. The post was not advertised by the Bank. He received information of vacancies in the Bank. Then he approached Manager Shri Sadana. He was orally engaged. In his cross-examination, workman admits that he was interviewed orally. Appointment letter was not given to him. He continuously worked for 11 ½ years. He produced documents about continuously working with the Bank. He further says that copies of said documents are not produced. He received education upto 8th standard.

6. Management's witness Shri Ramsharan Prajapati filed affidavit of his evidence supporting contentions of IInd party in Written Statement. That workman had worked 87 days in 1984, he was not continuously working. Workman was called for interview but he could not be absorbed as his working days were less than other candidates. In his cross-examination, witness says as per record available, workman has worked in the branch from 1984 to 1995 with intermittent gaps. Management's witness was unable to tell whether workman completes 240 days service during each of the year. He claims ignorance whether workman was served with notice, retrenchment compensation was paid to him. documents produced by workman Exhibit W-2 shows working worked 87 days as temporary employee. Said application was submitted for permanent absorption. It is clear that prior to said application was submitted, workman had not completed 240 days continuous service. As per document Exhibit W-3, workman completed 544 days working in 1994-95. His services were terminated without notice is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.

7. **Point No.2-** Learned counsel for workman Shri K.B. Singh emphasized that workman completed 11 ½ years continuous service. Workman be allowed reinstatement with back wages. However as per Document Exhibit W-2, as discussed above workman was not continuously working from 1984 to 1995. Workman was not appointed following recruitment process. Learned counsel for workman submitted copy of award in R/9/12. The facts of present case are not comparable as workman was not continuously working. In application Exhibit W-2, 87 days working is shown. However he completed 544 days working in 1994-95. His services are terminated in violation of

Section 25-F. Workman was engaged on daily wages de hors selection rules. Workman cannot be allowed reinstatement with back wages. Considering nature of employment of workman, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No.2.

8. In the result, award is passed as under:-

- (1) The action of the Dy. General Manager, State Bank of India, Zonal Office, Jyandraganj, Gwalior (MP) in terminating the services of Shri Rajendra Kumar Raikwar S/o Shri Tulsidas Raikwar w.e.f. 4-11-95 is not proper.
- (2) IInd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 455.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 179/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/227/2001-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 455.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 179/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/227/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/179/2001

Shri Mohanlal Sain,  
s/o Shri Ram Prasad Sain,  
R/o Near Shankarji Temple,

Kunti Mohalla,  
PO Jawaharnagar,  
Distt. Satna (MP)

...Workman

#### Versus

Branch Manager,  
State Bank of India,  
Main Branch, Semria Chowk,  
Satna (MP)

...Management

#### AWARD

Passed on this 22nd day of January, 2015

1. As per letter dated 26-11-2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/227/2001-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of State Bank of India, Main branch, Semria Chowk, Satna (MP) in not regularizing the services of Shri Mohanlal Sen S/o Shri Ram Prasad Sen instead terminating his services w.e.f.4-8-2000 is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 4/1 to 4/3. Case of Ist party workman is that he was working on vacant post of messenger with IInd party. He was continuously working till 4-8-00. Ist party No.1 is Controlling Authority of the Bank. Services of Ist party workman were orally terminated from 4-8-00. Ist party workman further submits that standing orders are binding on establishment of IInd party after completion of six months service. He was entitled to be classified as permanent employee. His services were terminated without issuing notice. He was not paid retrenchment compensation. Pay in lieu of notice was also not paid to him. Principles of first come last go was not followed. Termination of his service is in violation of Section 25-F of ID Act. He belongs to backward community. He had attained age of 40 years. His family was dependent on him. after termination of his service, he is unemployed. On such ground, workman prays for his reinstatement with back wages.

3. IInd party submitted Written Statement at Page 8/1 to 8/7. It is submitted that after dispute raised by workman, conciliation proceedings failed. Government referred dispute to this Tribunal. IInd party submits that workman was not appointed as messenger by the Bank. Workman was running hair cutting salon at Collectorate office, Satna. He was also doing work of cleaning, sweeping of said office. IInd party engaged him as casual labour at Extension counter of the Bank at Collector Office, Satna. Workman was not appointed as messenger against vacant post. The



engagement of workman for cleaning, sweeping work was contractual. Workman had not completed 240 days continuous service. There was no question of his attaining status of permanent employee. It is reiterated that workman was running hair salon in premises of Satna office and he was also doing cleaning, sweeping in other office. Workman was engaged for cleaning sweeping work for ½ hour to 1 hour in its premises. As workman was not appointed against any vacant post, there was no question of terminating his service. The discontinuation of workman was covered under Section 2(oo)(bb) of ID Act. Workman was not entitled to retrenchment compensation or notice of termination. On such grounds, IInd party prays that award be answered in its favour.

4. Workman was reported dead. Despite of repeated notice, his LRs could not be substituted.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |  |
|--|--|
| (i) Whether the action of the management of State Bank of India, Main branch, Semria Chowk, Satna (MP) in not regularizing the services of Shri Mohanlal Sen S/o Shri Ram Prasad Sen instead terminating his services w.e.f.4-8-2000 is legal and justified? | In Affirmative                         |
| (ii) If not, what relief the workman is entitled to?"  | Workman is not entitled to any relief. |

### REASONS

6. Though workman raised dispute challenging termination of his services, during pendency of reference proceedings, workman died. Copy of death certificate is produced on record. It shows that workman died on 12-2-2004. Despite of issuing notices to legal heirs, their presence could not be secured. LRs failed to participate in reference proceeding.

7. Management filed affidavit of its witness Shri Ashok Srivastava. Management's witness stated that workman was not engaged against permanent vacant post of messenger. Workman was purely engaged as casual labour at extension counter of the Bank in Collector office, Satna. He was engaged only for ½ to 1 hour for cleaning, sweeping work. That record of daily wage employee or his family members is not maintained. For failure of LRs to participate in reference proceeding, I record my finding in Point No.1 in Affirmative.

8. In the result, award is passed as under:-

- (1) The action of the management of State Bank of India, Main branch, Semria Chowk, Satna (MP) in not

regularizing the services of Shri Mohanlal Sen S/o Shri Ram Prasad Sen instead terminating his services w.e.f.4-8-2000 is proper and legal.

- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 456.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिहार क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट [संदर्भ संख्या 06 (C)/2009] को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12011/18/2009-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 456.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No. 06 (C) of 2009] of the Central Government Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure in the Industrial Dispute between the management of Bihar Kshetriya Gramin Bank and their workmen, received by the Central Government on 02/03/2015.

[No. L-12011/18/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

### ANNEXURE

### BEFORE THE PRESIDING OFFICER INDUSTRIAL TRIBUNAL, PATNA

### Reference Case No.:- 06 (C) of 2009

Between the management of The Chairman, Bihar Kshetriya Gramin Bank, H.O. Bhagat Singh Chowk, Munger ( Bihar ) and the General Secretary, Western Railway Kamdar Sangh, 78/9-C, National Highway, Gandhidham (kutch) and The President, Bihar Provincial Gramin Bank Employees Asscn., 2nd Floor, Saboo Complex, Exhibition Road, Patna (Bihar).

**For the management :** Shri Sureshwar Manjhi, Manager (PAD), representative of the management.

**For the workman :** Shri B. Prasad, representative of The President, Bihar Provincial Gramin Bank Employees Asscn. 2nd Floor, Saboo Complex, Exhibition Road, Patna (Bihar).

**Present :** Shri Bipin Dutta Pathak, Presiding Officer, Industrial Tribunal, Patna.

**AWARD**

Patna, the 24th March, 2014

By adjudication order No. L-12011/18/2009-IR (B-1) New Delhi, date 27.08.2009 the Central Government (Government of India) Ministry of Labour/Shram Mantralaya, New Delhi referred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act') the following dispute between the management of The Chairman, Bihar Kshetriya Gramin Bank, H.O. Bhagat Singh Chowk, Munger (Bihar) and The General Secretary, Western Railway Kamdar Sangh, 78/9-C, National Highway, Gandhidham (Kutch) and The President, Bihar Provincial Gramin Bank Employees Assn., 2nd Floor, Saboo Complex, Exhibition Road, PATNA (BIHAR) for adjudication to the Central Government Industrial Tribunal, Patna.

**SCHEDULE**

"Whether the action of the management of Bihar Kshetriya Gramin Bank, Munger in inflicting punishment in respect of Sri Prashant Kumar Jaiswal, Clerk-cum-Cashier i.e reduction of one increment for two years and denial of promotion to Officer Cadre JMG Scale I is legal and justified? If not, what relief the workman concerned is entitled to?"

Heard Mr. B. Prasad on behalf of the workman Sri Prashant Kumar Jaiswal and Mr. Sukeshwar Manjhi, Manager (PAD) on behalf of the Bihar Gramin Bank and persuerd the record.

The case was for hearing on the acceptance of the documents for adjudication and to given award "Whether the action of the management of Bihar Kshetriya Gramin Bank, Munger in inflicting punishment in respect of Sri Prashant Kumar Jaiswal, Clerk-cum-Cashier i.e reduction of one increment for two years and denial of promotion to Officer Cadre JMG Scale I is legal and justified? If not, what relief the workman concerned is entitled to?"

On 21.01.2014 the case was fixed for 3rd March, 2014. In the mean time the tribunal received registered letter sent by Prashant Kumar Jaiswal (workman) in which he has made prayer to withdraw the case because he has been promoted from the post of clerk – cum- cashier to the post of JMG scale-1 in officers cadre. However, this is wrong practice to sent any petition by post.

On 3rd March, 2014 Mr. B. Prasad appeared on behalf of the workman and Mr. Sukeshwar Manjhi, Manager (PAD) on behalf of the management. One petition has been filed on behalf of the workman which is dt 23.01.2014. In the petition it has been stated that Bihar Gramin Bank has given in promotion from clerk-cum- cashier to officers JMG scale-1 w.e.f 09.12.2012. Now he has no more grivances from bank so he withdraw his above said case.

Petition to the said effect has also been filed on behalf of the management to this effect on 03.03.2014 that Prashant Kumar Jaiswal officers of his bank has requested to withdraw the case pending before this court. Therefore, request has been made to withdraw the case on that application, no objection has been made by Mr. B. Prasad, President Bihar Provincial Gramin Bank Employees Association.

Since promotion has been given to Mr. Prashant Kumar Jaiswal in Officer cadre JMG scale-1 on 09.12.2012 and in his petition he has stated that no more grievances from bank. In that view of the matter, matter under reference doesn't appear to continue. So award is given is "No Dispute" between the management and the workman. Accordingly the award is answered is "No Dispute Award."

This is my award accordingly.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 457.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिलासपुर रायपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट [संदर्भ संख्या 221/92] को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/107/92-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 457.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 221/92) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bilaspur Raipur Kshetriya Gramin Bank and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/107/92-IR (B-I)]

SUMATI SAKLANI, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/221/92**

Shri Mahesh Kumar Manikpuri,  
S/o Shri Jagoot Das Manikpuri,  
Gram Bhanpuri,  
Post Birgaon,  
Thana Khamatarai,  
Distt. Raipur

...Workman

**Versus**

The Chairman,  
Bilaspur Raipur Kshetriya Gramin Bank,  
Dayalband,  
Bilaspur

...Management

**AWARD**

Passed on this 28th day of January, 2015

1. As per letter dated 27-28/10/92 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/107/92-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Bilaspur-Raipur Kshetriya Gramin Bank in terminating the services of Shri Mahesh Kumar Manikpuri w.e.f. 30-6-91 and not considering him for further employment while recruiting fresh hands is justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/1 to 2/2. Case of workman is that during 86-87, he was working for 89 days as temporary messenger with IInd party Bank. Again he was engaged as messenger from 13-3-90. He was paid wages for the period 21-3-90 to 29-6-91. He worked continuously more than 200 days. He was discontinued without notice or without assigning any reasons. Prior to his termination, he was working against sanctioned post. Any misconduct was not alleged against him. Therefore termination of his service is illegal.

3. IInd party filed Written Statement at Page 7/1 to 7/3 opposing claim of Ist party workman. IInd party submits that it is established under Regional Rural Bank Act 1976. The object of said act is to provide banking facilities in rural areas. That Central Govt. has power to regulate service conditions of employees of the Bank. The Ministry issued Certificate dated 20-5-81 prohibiting appointments of peon, messengers, sweepers in the Bank. The part time employees could be employed on daily wages and wages proportionate to their working hours can be paid. The employees engaged for cleaning, sweeping and drinking water, working hours were restricted to 4 hours by issuing circulars. Workman is not covered as workman as he was temporarily engaged for 4 hours in a day. He not completed 240 days continuous service. Workman was not sponsored through Employment Exchange. His appointment is illegal. On such contentions IInd party prays for rejection of claim.

4. Workman submitted rejoinder at Page 6/1 to 6/3 reiterating his contentions in statement of claim. He has contented that he was working from 9.30 to 7-8 PM. He was paid wages only for 4 hours despite working whole day. After termination of his services, Bank has engaged other person as messenger. Bank has not displayed

seniority list as per Rule 77. That 60 post of messengers are lying vacant.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |   |                     |
|---|---------------------|
| (i) Whether the action of the management of Bilaspur-Raipur Kshetriya Gramin Bank in terminating the services of Shri Mahesh Kumar Manikpuri w.e.f. 30-6-91 and not considering him for further employment while recruiting fresh hands is justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?”   | As per final order. |

**REASONS**

6. Workman is challenging termination of his service alleging violation of Section 25-F of ID Act. Management submits that Ist party is not covered as workman as he was temporarily engaged. Definition of workman under Section 2(S) of ID Act doesnot discriminate the employees working for different working hours.

7. Workman filed affidavit of his evidence stating that he was continuously working in 90-91 with IInd party. He was also working in 1986-87. He was discontinued without any reasons. He was not paid retrenchment compensation, no notice was given to him. He was unemployed. In his cross-examination, workman says he was engaged temporarily engaged on daily wages. He denies working only 4 hours in a day. He denies that he was paid wages every day. He denies that the Manager has no authority to engage temporary employees beyond 90 days. He denies that he not worked continuously for more than 240 days.

8. Management filed affidavit of witness Shri Dilip Kumar Soni and Shri Durga Prasad Sao. Both witness of management supported contentions of IInd party in Written Statement. That workman had not completed 240 days continuous service. His name was not sponsored through Employment Exchange. Dilip Kumar Soni in his cross-examination says he was not posted at relevant time. Ist party was working in the branch. He denied that workman completed more than 240 days continuous service. He admits that he has no personal knowledge about working of the Ist party. Witness of management denies that workman was continuously working from 13-3-90 to 29-6-91. He did not recollect who was Branch Manager working at Bhanpuri Branch in 1991.

9. Management's witness Shri Durga Prasad in his cross-examination says that he has not brought any record about working of Ist party. That all the documents were with the Advocate of IInd party. He had not seen any

document before filing affidavit of evidence. His affidavit is based on memory. When any documents are not produced by IInd party, what was the source of information for filing affidavit on behalf of the management is not disclosed therefore evidence of witnesses of IInd party cannot be relied in preference to the evidence of workman. I accept evidence of workman that he was continuously working from 90-91. His services are terminated without notice in violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.

10. **Point No.2-** as per my finding in Point No.1, Ist party workman is terminated in violation of Section 25-F of ID Act, question arises whether workman is entitled for reinstatement with backwages.

11. Learned counsel for IInd party submitted written notes of argument and relies on ratio held in

Case of Bombay Gas Company Ltd. versus Gopal Bhiva and others reported in AIR 1964-SC-752. Their Lordship held Limitation Act doesnot apply for rejecting claim under Section 33(C)(2). The ratio held has no bearing to the controversy between parties.

Next reliance is placed on ratio held in case of Mukund Ltd. versus Mukund Staff and officers Association reported in 2004(10)SC-460. The ratio held by their Lordship relates to status of an employee as workman or non-workman has to be decided on the basis of duties, responsibilities and powers as given in Section 2(s).

Ratio held in above cited case cannot be applied to present case as workman was working as temporary employee on daily wages. Workman was not working in supervisory or managerial post therefore ratio cannot be applied to present case. Considering working days of workman on daily wages, workman was not appointed following recruitment process, reinstatement with back wages would not be justified. Considering short period of working days of workman, compensation Rs. 50,000/- would be appropriate. Accordingly I record my finding in Point No.2.

12 In the result, award is passed as under:-

- (1) The action of the management of Bilaspur- Raipur Kshetriya Gramin Bank in terminating the services of Shri Mahesh Kumar Manikpuri w.e.f. 30-6-91 and not considering him for further employment is not legal and proper.
- (2) Management is directed to pay compensation Rs.50,000/- to the workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

- (3) IInd party shall pay cost of Rs.5000/- to Ist party workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 458.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईडीबीआई बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, दिल्ली के पंचाट (संदर्भ संख्या 111/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12011/55/2011-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 458.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/2011) of the Central Government Industrial Tribunal-cum-Labour Court No. 2, Delhi as shown in the Annexure in the Industrial Dispute between the management of IDBI Bank and their workmen, received by the Central Government on 02/03/2015.

[No. L-12011/55/2011-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT - II, KARKADOOMA COURT COMPLEX, DELHI

**Present :** Shri Harbansh Kumar Saxena

**ID No. 111/2011**

Sh. Ramesh Kumar, Gen. Secy.  
Readymade Garments Export Employees Union,  
I-441, Karampura,  
New Delhi-15 ...Workman

#### Versus

The Manager,  
IDBI Intech, IDBI Bank Zonal Office,  
Hansraj Pragji Building,  
Ist Floor, Dr. E. Moses Road,  
Worli Naka,  
Mumbai-400018 ...Management

#### AWARD

The Central Government in the Ministry of Labour vide notification No. L-12011/55/2011(IR(B-I) dated 01.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication:-



“Whether the action of the management of IDBI Intech Ltd. Mumbai in terminating the services of Sh. Neeraj Kumar Soni, Ex-Senior Executive, w.e.f. 11.8.2010, is legal and justified? To what relief the workman is entitled?”

On 16.12.2014 reference was received in this Tribunal. Which was register as I.D No. 111/11 and claimant was called upon to file claim statement within fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Claimant/workman on 6.2.2012 filed Claim Statement. On the basis of contents of claim statement workman Sh. Neeraj Kumar Soni, prayed that whole proceedings of termination is illegal, contrary of provisions of Labour Laws, proceedings be declared unjustified, workman be reinstated with full back wages alongwith 18% Interest on amount of back wages.

Contents of claim statement was supported by affidavit of claim statement.

Against claim statement management filed written statement on 9.10.12 copy of which supplied to workman. Contents of written statement are as follows:-

1. That unless and until the allegations made in the plaint are not specifically admitted shall be deemed to be wrong and denied.
2. That the Complainant had joined to the Respondent Company on 26th July, 2010 as a Senior Sales Executive.
3. That on the record maintained by the Respondent it had been marked that the Complainant joined to the Respondent Company on 26.07.2010 as a Senior Sales Executive and the Complainant did not report the branch since 12.10.2010.
4. That on 23.08.2010 and 16.09.2010 the Respondent had sent two absenteeism letters to the Complainant, but Complainant did not come to the branch nor gave any reply upon the said letters also. The copy said letters are annexed herewith an Annexure –A & B.
5. That on the date of joining the Complainant was given relevant training regarding the product and processes along with other members of the team and was informed about the desired expected from a SSE employee and the Complainant showed reluctance regarding the target also.
6. That the Complainant had came to the branch right at the time of opening and marked his attendance for the day and did not report thereafter to anyone regarding his daily activities pertaining to the same. And the Complainant was also reprimanded by his line Manager for the same.
7. That as per records maintained by the Respondent the concerned contractual employee had attended work

for 16 days and the Respondent Company is willing to pay to the complainant 16 days of salary as per Complainant's eligibility.

8. That the Complainant has complained on the same cause of action before the different Authorities, therefore the said complaint should be dismissed u/s 11 of CPC as Res-Judicata,

#### PRELIMINARY OBJECTIONS:-

1. That the Complainant has not come to this Hon'ble Court with clean hands and have suppressed and concealed material and important facts as such the Complainant is not entitled for any relief. The Complainant, themselves have come before this Hon'ble Court with a malafide intention by giving some false, frivolous and erroneous submissions and are guilty of suppressio veri and falsi suggestio as the Complainant have deliberately and intentionally concealed all the material facts in order to fulfill their gutted attitude. Hence, the complaint filed by the Complainant is liable to be dismissed with exemplary costs as the concealment amounts to contempt of the Court.
2. That, the Complainant has not cause of action against the Respondent and hence the complaint filed by him against the Respondent is not maintainable in the eye of law and hence should be dismissed/rejected.

#### REPLY ON MERITS:-

1. That the contents of this para under reply facts are wrong and denied. It is pertinent to mention here that the complainant had joined to the Respondent Company on 26th July 2010 as a senior Sales Executive on contractual basis for three years.
2. That the contents of this para under reply facts are wrong and denied.
3. That the contents of this para under reply facts need no comments.
4. That the contents of this para under reply facts are wrong and strictly denied. It is pertinent to submit here that the allegation on the Respondent is only to misleading to the Hon'ble Court.
5. That the contents of this para under reply facts are wrong and strictly denied. It is pertinent to submit here that the allegation on the Respondent is fabricated and false. It is again pertinent to mention here that on the date of joining the Complainant was given relevant training regarding of the team and was informed about the desired target expected from a SSE employee and the Complained showed reluctance regarding the target also.
- 6-9. That the contents of this para under reply facts need no comments due to matters of records.
- 10-11. That the contents of this para under reply facts are wrong and strictly denied. It is pertinent to mention here that on 23.08.2010 and 16.09.2010 the Respondent had sent

two absenteeism letters to the complainant, but the Complainant did not come to the branch nor gave any reply upon the said letters also.

12. That the contents of this para under reply facts need no comments due to matters of records.

13-14. That the contents of this para under reply facts are wrong and strictly denied. Therefore needs no comments.

15. That the contents of this para under reply facts need no comments.

Last Para is the Prayer to this Hon'ble Court which is strongly opposed in view of the facts and circumstances stated herein above. It is therefore, respectfully prayed that the suit/complaint of the complainant is baseless and without merit. Hence suit of the complainant is liable to be dismissed with heavy cost and to pass any appropriate order as deemed fit and proper in favour of the Respondent and against the complainant, for which such act of kindness, the Respondent shall as in duty bound, ever pray.

Written statement was supported with affidavit.

Against contents of written statement workman filed rejoinder on 11.1.2013.

Through which he reaffirmed the contents of claim statement and denied the contents of written statement.

On 3.05.2013 My Ld. Predecessor passed an order on order sheet that no other issue is required to be framed other than referred by appropriate government of this tribunal for adjudication and fixed 21.06.2013 for evidence of the parties with direction to claimant conclude first.

On 2.09.2013 workman filed affidavit in his evidence copy of which supplied to Ld. A/R for the management.

Workman tendered his affidavit on 17.12.13. As none turn up to cross-examine the workman on 18.06.2014. Hence, right of cross-examination of management was closed and fixed 30.07.2014 for management evidence.

On 30.7.2014 I fixed 12.09.2014 for management evidence. On 12.9.2014 I closed the evidence of management because of its dormancy and fixed 20.11.2014 for arguments.

Management moved an application to set aside a order of closing the right of cross-examination. Which was allowed on 25.11.2014 and workman was cross-examined and then I fixed 23.12.2014 for management evidence. On 23.12.2014 Proxy Counsel for management expressed desire to his Senior not to produce any evidence on behalf of the management then, I fixed 12.1.15 for oral / written arguments. I have heard the oral arguments of workman on 12.11.15 and I fixed 3.2.15 for award and permitted Ld. A/R for the management to argue before this date.

Workman filed written arguments on 12.1.2015 in reply to written arguments of workman management filed written arguments on 13.1.2015.

In the light of contention and counter contentions of workman and Ld. A/R for the management. I perused the question of determination mentioned in schedule of reference. Which were treated issues of the instant Industrial Dispute as well as evidence on record and settled law on the point.

Perusal of schedule of reference makes it crystal clear that questions of determination mentioned in it are as follows:-

“Whether the action of the management of IDBI Intech Ltd. Mumbai in terminating the services of Sh. Neeraj Kumar Soni, Ex-Senior Executive, w.e.f. 11.8.2010, is legal and justified? To what relief the workman is entitled?”

Out of which question of determination No.1 is as follows:-

“Whether the action of the management of IDBI Intech Ltd. Mumbai in terminating the services of Sh. Neeraj Kumar Soni, Ex-Senior Executive, w.e.f. 11.8.2010, is legal and justified?”

Perusal of it makes it crystal clear that burden to prove this question of determination lies on management but in the instant case management has adduced no evidence. Inwant of which this question of determination cannot be decided in favour of management simply on the basis of pleadings of management.

It is settled law that pleading without evidence is waste paper. So, question of determination No.1 is liable to be decided in favour of workman and against management.

Which is accordingly decided.

Now, it is to be determined to what relief the workman is entitled. As per evidence on record workman has not completed work for 240 days. He hardly worked for about 3 months only. So, Compensation U/s 25 H etc. of I.D. Act are not payable to workman but management adopted unfair labour practice in the instant case against workman. So workman is entitled for amount of reasonable compensation.

Reference is liable to be decided in favour of workman and against management and claim statement is liable to be allowed. Which is accordingly allowed.

In the interest of justice Rs. 10,000 are just & fair amount of compensation liable to be awarded to workman Sh. Neeraj Kumar Soni. Which is accordingly awarded to workman Sh. Neeraj Kumar Soni.

Award is accordingly passed. Management is directed to pay Rs. 10,000 to claimant Sh. Neeraj Kumar

Soni, as compensation within 2 months after expiry of period of available remedy against this award.

Dated:-3.2.2015

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 459.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बिलासपुर रायपुर क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबंध में उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 151/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12012/180/91-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 459.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 151/91) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Bilaspur Raipur Kshetriya Gramin Bank and their workmen, received by the Central Government on 02/03/2015.

[No. L-12012/180/91-IR (B-I)]

SUMATI SAKLANI, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/151/91

Shri Ramakant Sahu,  
Gram Post Marod,  
Thana Marod, Tehsil Dhamtari,  
Distt. Raipur

...Workman

#### Versus

Chairman,  
Bilaspur Raipur Kshetriya Gramin Bank,  
Dayalbandh,  
Bilaspur

...Management

#### AWARD

Passed on this 28th day of January, 2015

1. As per letter dated 20-8-91 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/180/91-IR(B-3). The dispute under reference relates to:

“Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Branch at Marod in terminating the services of Shri Ramakant Sahu, S/o Motilal Sahu Daily rated part time sweeper-cum-waterman w.e.f. 31-12-90 and not considering him for further employment while recruiting fresh hands under Section 25-H of ID Act is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 11/1 to 11/4. Case of workman is that he was appointed to the post of messenger on 25-9-89 by IInd party at Bilaspur office. He was performing duties of messenger till termination of his services. It is further submitted that IInd party was maintaining monthly wage register. Ist party was shown as sweeper-cum-waterman in said register. On his objection about the designation, IInd party informed Ist party that post of sweeper-cum-waterman is a sanctioned post and he will be made permanent. That the Branch Manager Shri P.K.Gupta suddenly changed the procedure of taking the signature in monthly register. He started taking signatures on vouchers of weekly payment. Ist party when asked reasons about it, he was told that his signature on voucher were obtained as per direction of Head office relating weekly payments. He further submits that his service record was satisfactory. He was not punished for any kind of misconduct. He was working as regular employee of the Bank.

3. That services of workman were terminated by oral order on 1-1-1991 without assigning any reasons. For termination of his services, he was informed that termination of his service was according to direction of head office. He submits that before termination of his service, he acquired status of permanent employee of IInd party. His termination was without notice, no retrenchment compensation was paid to him. termination of his service is in violation of Section 25-F of ID Act. That he was working for 8 hours every day. However he was forced to write 4 hours working every day on payment vouchers under the guise of avoiding audit objections. After terminating his services, IInd party has appointed other persons namely Amarsingh Bhargava- BCom, Chandrakant Sahu- 12th pass, Ravi Kumar Sahu- 12th passed etc. has been discriminated by appointing those persons. On such ground, workman is praying for reinstatement with back wages.

4. IInd party submitted Written Statement at Page 4/1 to 4/3. Claim of workman is opposed. As per IInd party, Ist party is not covered as workman as his initial appointment was temporary part time daily rated worker. Ist party employee was doing work of sweeper-cum-waterman for 4 hours in Bank. He was required to clean and sweep bank premises. For said nature of work, minimum qualification required was 8th standard. His employment came to end

on closing the Bank. He is not employee of the Bank as per Staff Service Regulations framed in exercise of powers under Section 30 of Regional Rural Bank Act 1975. The Board of Directors of Bilaspur Raipur Kshetriya Gramin Bank after consultation with State Bank of India has been sponsored a previous sanction of Central Govt. as per Para- 4 in Chapter -2, temporary staff cannot be appointed for more than 90 days. Workman had not disclosed his qualifications about matriculation therefore his appointment is void-ab-initio. On such ground, IInd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

- |  |                     |
|--|---------------------|
| (i) Whether the action of the management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Branch at Marod in terminating the services of Shri Ramakant Sahu, S/o Motilal Sahu Daily rated part time sweeper-cum-waterman w.e.f. 31-12-90 and not considering him for further employment is justified? | In Negative         |
| (ii) If not, what relief the workman is entitled to?"  | As per final order. |

### REASONS

6. The terms of reference relates to legality of termination of services of Ist party workman Ramakant Sahu and not considering him for further employment. Claim of workman is totally denied by IInd party management. workman filed affidavit of his evidence. Workman has stated that he was appointed as messenger in the IInd party Bank from 21-9-89. He was working as such from 10.30 AM to 6 PM. Attendance register was maintained. In said register, his name was shown as sweeper-cum-waterman. Management had stopped taking signature in said register. His signature were obtained in the vouchers. His services were terminated from 1-1-1991. He was orally terminated without notice, no retrenchment compensation was paid to him. other persons Amarsingh Bhargava, Chandrakant Sahu, Ravi Kumar Sahu etc. were engaged by the management. In his cross-examination, workman says he was engaged on daily wages. He denies that he was working as per exigencies. He denied suggestion that he was working about 4 hours per day. He admits that he was engaged on post of sweeper cum waterman. That he is graduate. Qualification for work of sweeper and waterman is 8th standard. He denies that at the time of his initial engagement, he told Manager he had passed 8th standard. He denies that he had not worked more than 240 days during any of the year.

7. Affidavit of evidence of management witness Shri Dikip Kumar Soni and Pradeep Kumar Gupta is filed. Both supported contentions of management that qualification of post of sweeper is 8th standard. That the employment of workman came to end at every day and his initial appointment was temporarily part time employee. Both the witnesses have stated that Manager has no power to appoint temporary employees more than 90 days. That workman had not completed 240 days continuous service. Dilip Kumar in his cross says that he has not brought any document about employment of workman. He admits that workman was working at Marod branch. During said period, he was not working in said branch. He claims ignorance that during what time Manager was requiring workman to work in the branch. He claims ignorance that workman was attending branch at 11 AM and after doing cleaning, sweeping work, he was distributing letters.

8. Management's witness Pradeep Kumar Gupta in his cross-examination says that workman was working in Marod branch from August 90 to May 95. He also admits that handwriting in experience certificate referred to him which is marked as Exhibit M-2. Said documents shows that workman had worked for 364 days from 25-9-89 to 31-12-90. Said document is sufficient to hold that workman completed 240 days continuous service. Workman was not terminated issuing notice, retrenchment compensation was not paid to him. termination of services of workman is in violation of Section 25-F of ID Act.

9. The copy of advertisement in Daily Navbharat dated 30-11-2013 is produced on record. The witness of management claims that he have come to know about said advertisement only after the document was referred to him. Evidence of workman also on the point after termination of his services, other persons were employed by IInd party was not challenged in his cross-examination. However the evidence on record shows workman was engaged on daily wages by Manager. He was not selected by following recruitment process. Evidence shows that termination of his service is in violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.

10. **Point No.2-** In view of my finding in Point No.1 termination of service of workman is illegal, question arises whether workman is entitled for reinstatement with back wages. The evidence on record shows workman was engaged by IInd party for 364 days on daily wages. He was not appointed following recruitment process. Reinstatement of workman could not be justified.

11. Learned counsel for IInd party submitted written notes of argument and relies on ratio held in

Case of Bombay Gas Company Ltd. versus Gopal Bhiva and others reported in AIR 1964-SC-752. Their Lordship held Limitation Act doesnot apply for



rejecting claim under Section 33(C)(2). The ratio held has no bearing to the controversy between parties.

Next reliance is placed on ratio held in case of Mukund Ltd. versus Mukund Staff and officers Association reported in 2004(10)SC-460. The ratio held by their Lordship relates to status of an employee as workman or non-workman has to be decided on the basis of duties, responsibilities and powers as given in Section 2(s).

Ratio held in above cited case cannot be applied to present case as workman was working as temporary employee on daily wages for 364 days shown in Exhibit W-2. Workman was not working in supervisory or managerial post therefore ratio cannot be applied to present case. Workman was working on daily wages for 364 days would not justify his reinstatement with back wages. Considering his working days, compensation Rs. 50,000/- would be appropriate. Accordingly I record my finding in Point No.1.

12. In the result, award is passed as under:-

- (1) The action of the management of Bilaspur Raipur Kshetriya Gramin Bank in relation to their Branch at Marod in terminating the services of Shri Ramakant Sahu, S/o Motilal Sahu Daily rated part time sweeper-cum-waterman w.e.f. 31-12-90 and not considering him for further employment is not proper and legal.
- (2) IInd party is directed to pay compensation Rs.50,000/- to the workman within 30 days from the date of publication of award.  
In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.
- (3) IInd party shall pay cost of Rs.5000/- to Ist party workman.

R. B. PATLE, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 460.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ एग्जीक्यूटिव अफसर कैंटोनमेंट बोर्ड, अम्बाला कैंट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, चंडीगढ़ के पंचाट (संदर्भ संख्या 272/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2015 को प्राप्त हुआ था।

[सं. एल-13012/01/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 460.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 272/2013) of the Central Government Industrial Tribunal-cum-

Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Chief Executive Officer, Cantonment Board, Ambala Cantt. and their workman, which was received by the Central Government on 26/02/2015.

[No. L-13012/01/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,  
PRESIDING OFFICER, CENTRAL GOVT.  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,  
CHANDIGARH**

**Case No. ID 272 of 2013**

Reference No. L-13012/01/2013-IR(DU)

dated 24.2.2014

Sh. Jag Mohan Sharma,  
Resident of House No. 1F,  
Ram Nagar, Ambala Cantt,  
Haryana

...Workman

#### Versus

1. The Chief Executive Officer,  
Cantonment Board,  
Ambala Cantt( Haryana)

...Respondent

#### Appearances :

For the Workman : Workman in person

For the Management : Sh. Mahesh Kumar

#### AWARD

Dated:-20.02.2015

Government of India, Ministry of Labour vide notification No. L-13012/01/2013-IR (DU) dated 24.2.2014 has referred the following dispute to this Tribunal for adjudication:

#### Term of Reference :

“Whether the demand of the applicant Shri Jag Mohan Sharma for non-payment of fixed medical allowance @ Rs. 100/- per month w.e.f. 1.6.2004 to 31.08.2008 by the Chief Executive officer, Cantonment Board, Ambala Cantt, Ambala is just ,fair and legal? If yes to what relief the workman is entitled to and from what date?”

2. Today the case was fixed for settlement. Authorized representative of the management Sh. Mahesh Kumar today made a statement that management shall make the payment of the claim of Shri Jag Mohan Sharma within one month from today. The workman Shri Jag Mohan Sharma also made a statement that he withdraws the

present reference in the light of the statement made by the authorized representative of the management.

3. In view of the statement made by the representatives of the parties, the present reference is returned as withdrawn. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.  
20.02.2015

S. P. SINGH, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 461.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनिट रन कैटीन, एयर फोर्स, नागपुर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/67/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-14012/48/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 461.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/67/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Unit Run Canteen, Air Force, Nagpur and their workman, which was received by the Central Government on 02/03/2015.

[No. L-14012/48/2003-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/67/2004**

Date: 12.02.2015

**Party No. 1** : The Office-Incharge,  
Unit Run Canteen, Air Force,  
Govt. of India, Ministry of Defence,  
Vayusena Nagar, Nagpur-440007

#### Versus

**Party No. 2** : Shri Ramesh Shankar Reddy,  
C/o Shri B.N.Kokate, Exta Apartment,  
RMS Colony, Behind Police Line,  
Takli, Nagpur.

#### AWARD

(Dated: 12th February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Unit Run Canteen, Air Force and their workman, Shri Ramesh Shankar Reddy, for adjudication, as per letter No.L-14012/48/2003-IR (DU) dated 12.07.2004, with the following Schedule:-

"Whether the action of the management of Unit Run Canteen, Air Force Station, Vayunagar, Nagpur in terminating the services of Shri Ramesh Shankar Reddy w.e.f. 13.02.2002 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Ramesh Shankar Reddy, ('the workman' in short), filed the statement of claim and the management of Unit Run Canteen, Air Force, Nagpur ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed in the canteen store department w.e.f. 01.02.1998 on daily wages of Rs. 50/- per day and he was in continuous service till 13.02.2002, when his services were orally terminated by party No.1 in an illegal manner and he had completed 240 days of work in a year and as such, his services should not have been terminated, without following the prescribed Rules and in the year 1999, he had worked for 292 days and the Hon'ble Supreme Court in the case of the Union of India versus M.Aslam & others decided in 2001 have held that employees working in Unit Run Canteens of the defence services are Government servants and are entitled to all the benefits and the Air force canteen is an industry and services of the said canteens are governed by the provisions of the Act and termination of his services was in violation of the provisions of sections 25-F and 25-G of the Act and his termination from service was illegal, arbitrary and against the principles of natural justice and from the date of his termination, he is out of employment and he is facing severe hardship and he is entitled for reinstatement in service with consequence benefits.

3. The party No.1 in the written statement has pleaded inter alia that the workman is not a "workman" as defined under the law and the claim made by him is not maintainable and is liable to be rejected and the claim has been filed beyond the period of Limitation with ulterior motive and the provisions of Law under which, the workman has made the claim are not applicable his case and the Act has no application to Defence establishments and therefore, this Tribunal has no jurisdiction to entertain and try the matter.

It is further pleaded by the party no.1 that the workman was working in the canteen on daily wages and he was never in service of the Air force Unit Run canteen and therefore, there was no question of termination of his services and the workman was called to work in the canteen on as and when required basis for offloading the consignment or for shifting of the stores etc. and he was never on the pay roll of the canteen and he was never taken on attendance muster and appointment letter was never issued to the workman and the claim of the workman that he worked for 292 days in the year 1999 is not true and the workman was never an employee of the Unit Run Canteen and he was engaged only on as and when required basis and as such, the principles enunciated by the Hon'ble Apex Court referred in the statement of claim are not applicable to his case and the workman is not entitled to any relief.

4. The workman did not file any rejoinder.

5. The workman has examined himself as a witness in support of his case.

In his examination-in-chief which is on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in his cross-examination, the workman has admitted that he has not filed any appointment order as no appointment order was issued by the management and he has not filed any document to show that he had completed 240 days of work in any calendar year.

6. One Shri Sudhakar Pandey has been examined as a witness by the party No.1, in support of the stands taken by it. The examination-in-chief of the witness examined by party No.1 is on affidavit is more or less in the same line of the stands taken by party No.1 in the written statement.

In his cross-examination, Shri Pandey has stated that at present, 12 permanent and 8 casual employees are working in the canteen in question and the casual employees engaged in the canteen are being paid their wages on monthly basis for the actual days of attendance in the canteen and a register is being maintained regarding the payment of the wages to the casual employees. This witness has further stated that the workman was engaged in the years 2000 and 2001 as and when required basis and management has not produced any attendance register or payment register in regard to the days of engagement of the workman and payment of wages to him and he searched for those registers, but did not find the same and he was not working in the said canteen in 2000 and 2001 and he cannot say who was the canteen-in charge in 2000 and 2001 and he did not verify the number of days of the engagement of the workman in the canteen in 2000 and 2001 and gate passes are being issued to the casual workers engaged in the canteen by the security department.

7. At the time of argument, it was submitted by the learned advocate for the workman that the workman was appointed in the canteen store department w.e.f. 01.02.1998

on daily wages of Rs. 50/- per day and he was in continuous service till 13.02.2002, when his services were terminated orally by party NO.1 illegally and the workman was issued with service/gate pass as per the Rules of the Unit Run Canteen and the canteen store department is a part of the Unit Run Canteen and the employees working in the canteen are Government employees and as in the year 1999, the workman completed 292 days of work, he should not have been terminated from service without following the provisions of sections 25-F and 25-G of the Act as the termination of the workman is illegal, he is entitled for his reinstatement in service with continuity and full back wages and other consequence benefits.

In support of the contention, the learned advocate for the workman placed reliance on the decision of the Hon'ble apex Court reported in AIR 2001-526(Union of India Vs.V.M.Aslam).

8. Per contra, it was submitted by the learned advocate for the party No.1 that the reference is not maintainable as there is unexplained inordinate delay in raising the dispute and the workman was never appointed by party No.1 as an employee and his engagement was on casual daily wages basis as and when required for offloading the consignment or for shifting of stores and as there was no appointment, there was also, no question of termination of his services and for the application of section 25-F of the Act, it is necessary for a workman to prove that in fact he had worked for 240 days in the preceding 12 months of the alleged date of termination and the burden to prove the same lies on the workmen and mere affidavit or self serving statement made by the workman will not suffice and in this case, the workman except his evidence on affidavit has not produced any other evidence in support of his claim of working for 240 days in the 12 months preceding the date of his alleged termination and the provisions of sections 25-F and 25-G of the Act are not applicable to his case and the workman is not entitled to any relief.

In support of the contentions, the learned advocate for the party No.1 placed reliance on the decisions reported in 2008(4) Mh.LJ-652(State of Maharashtra Vs. Anil Eknath Kharat, (2006)2 SCC-794(Haryana State Agricultural Marketing Board Vs. Shubash Chand), (2006)1 SCC-106 (R.M.Yellatti Vs. Asstt. Executive Engineer), AIR 2006-1971 (Anil Rishi Vs.Gurbaksg Singh), (2006)8 SCC-67(State of M.P. Vs. Yogesh), and 2006(4) SCC-1(Secretary, State of Karnatak Vs. Umadevi)

9 Before delving into the merit of the case, I think it proper to mention that in view of the definition of "workman" given in section 2(s) of the Act, an employee employed on daily wages basis, but under the control and supervision of the employer is an workman. In this case, it is the admitted case by the parties that the workman was engaged by party No.1 on daily wages. So, the workman can be said to be a "workman" as defined in section 2(s) of the Act.

10. So far the contention raised by the learned advocate for the party No.1 regarding the non maintainability of the reference due to delay in raising the dispute by the workman is concerned, it is well settled by the Hon'ble Apex Court in a number of decisions that the Laws of Limitation which might bar any Civil Court from giving remedy in respect of lawful rights should not be applied by the Industrial Tribunal. On the other hand, it is a well accepted principle of industrial adjudication that over stale claim should not be generally encouraged or allowed unless there is a satisfactory explanation for the delay. In the decision reported in 2008(4) Mh.LJ-652(supra), the Hon'ble Bombay High Court also have held that, "Where the workman raised the demand for reinstatement after inordinate delay the reference must be dismissed on account of non-existence of the dispute."

Judging the case in hand with the touch stone of the principles as mentioned above, it is found that the workman raised the dispute before the Assistant Regional Commissioner (Central), Nagpur in 2003 and the report of failure of conciliation was submitted by the ALC on 29.07.2003. Hence there was no inordinate delay in raising the dispute by the workman. So, the contention raised by the learned advocate for the party No.1 in that regard fails.

11. At this juncture, I think it proper to mention about the principles envisage by the Hon'ble Apex Court in the decisions cited by the learned advocate for the workman, reported in AIR 2001 SC-526(supra). In the said decision, the Hon'ble Apex Court have held that:-

"Administrative Tribunals Act (13 of 1985) S.14- Government employee-Defence Services-Employees in Unit Run Canteens-Are Government employees-Cat retains jurisdiction to entertain their applications treating them as Govt. employees, by itself ipso facto entitle them to get all service benefits as is available to regular Govt. servants or even their counterpart."

It is clear from the principle enunciated by the Hon'ble Apex Court in the decision mentioned above that the same is regarding the regular employees employed in the Unit Run Canteens and the jurisdiction of the Administrative Tribunal to adjudicate the dispute in respect of such employees. The said decision is not in regard to employee engaged on daily wages like the workman. Hence, with respect, I am of the view that the said decision has no application to the case of the workman.

12. The claim of the workman is that he was working with the party no.1 from 01.02.1998 to 13.02.2002 and he had completed 292 days of work in total in 1999 and he was entitled for regularization in service, but he was orally terminated from services on 13.02.2002 without compliance of the provisions of sections 25-F and 25-G of the Act.

The party no.1 has denied the claim of the workman and has taken the plea that the workman did not complete

240 days of work in the preceding 12 months of 13.02.2002 and as such, there was no question of compliance of the provisions of sections 25-F and 25-G of the Act. Party no.1 has also taken the plea that the workman did not complete 240 days of work in any calendar year.

13. Before entering into the arena of merit of the case, in view of the stands taken by the parties, I think it apposite to mention about the principles enunciated by the Hon'ble Apex Court regarding the application of provisions of section 25-B and 25-F of the Act. The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Supra) have held that:-

"Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words "for every completed year of continuous service" has removed a discordance between the unamended section 25 B and the unamended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the unamended section 25-B".

14. In the decision reported in AIR 1981 SC-1253 (Supra), the Hon'ble Apex Court have held that,

"Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression "continuous". Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of



12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A”.

15. The Hon’ble Apex Court in the decision reported in AIR 2003 SC-38 (Supra) has held that:

“Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of –Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.”

16. In the judgment reported in (2006) 1 SCC-106 (supra), the Hon’ble Apex Court have held that :-

“Labour Law—Industrial Disputes Act, 1947—Ss. 25-F, 25-B, 11 and 10-Requirement of 240 days’ continuous service—Onus to prove—Evidence to be led-Applicability of Evidence Act, 1872—Held burden of proof lies on workman. It is for the workman to adduce cogent evidence, both oral and documentary—Mere affidavits or self serving statements made by the workman will not suffice—Evidence Act not applicable to proceedings under section 10 I.D.Act.”

17. So, it is clear from the principles enunciated by the Hon’ble Apex Court in the decisions mentioned above that for applicability of Section 25-F of the Act, it is necessary for the workman by leading cogent evidence, both oral and documentary to prove that in fact he had worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon’ble Apex Court, now, the present case at hand is to be considered.

18. In support of his claim, except his own evidence on affidavit, the workman has not adduced any other evidence. It is to be mentioned here that the workman had filed an application to direct the party No.1 to produce the vouchers regarding payment of wages to him relating to the year 1999. However, party No.1 failed to produce the said vouchers. According to party No.1, the said vouchers could not be traced out. So, on 13.06.2012, order was passed by this Tribunal for passing of appropriate order at the time of final disposal of the reference for non

production of the documents. So, for the non production of the documents by the party No.1, now, it is to be considered as to whether adverse inference is to be drawn against the party No.1.

It is clear from the principles enunciated by the Hon’ble Apex Court that the scope of enquiry before the Tribunal is confined to only twelve months preceding the date of termination to decide question of continuance of service for the purpose of Section 25-f of the Act. In this case, there was no application from the side of the workman to direct the party No.1 to produce documents regarding his engagement in the preceding 12 months of the date of his termination i.e. 13.02.2002. Moreover, there is no plea from the side of the workman that the vouchers relating to the year 1999 were suppressed by the party No.1. Hence for non-production of the vouchers of the year relating to payment of wages to the workman, no adverse inference is required to be drawn against the party No.1.

19. In this case, it is not pleaded by the workman that he had in fact worked for 240 days in the preceding 12 months of the date of his termination. Neither in the statement of claim nor in his evidence on affidavit, the workman has claimed of working for 240 days in the preceding 12 months of 13.02.2002, the alleged date of his termination. He has also not produced any other evidence except his own evidence on affidavit in support of his claim. As the workman has failed to plead and prove that in fact he had worked for 240 days in the preceding 12 calendar months of 13.02.2002, the provisions of Section 25-F of the Act are not applicable to his case.

Though, the workman has mentioned that there was violation of the provisions of section 25-G of the Act, he has neither pleaded nor adduced any evidence to show that an body else was engaged by party No.1 on daily wages for working in the canteen store department after his engagement and such junior was retained by the party No.1, though he was terminated from services. So, it cannot be said that there was violation of the provisions of Section 25-F of the Act. Hence, it is ordered:-

### ORDER

The action of the management of Unit Run Canteen, Air Force Station, Vayunagar, Nagpur in terminating the services of Shri Ramesh Shankar Reddy w.e.f. 13.02.2002 is legal and justified. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 462.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार

औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/85/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-40012/68/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 462.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/85/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02/03/2015.

[No. L-40012/68/2005-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

#### BEFORE SHRI J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

#### Case No. CGIT/NGP/85/2005

Date: 16.02.2015

**Party No. 1 :** The General Manager, Telecom,  
Bharat Sanchar Nigam Ltd.,  
PO & Distt. Akola,  
Maharashtra

#### Versus

**Party No. 2 :** Shri Salahuddin Khan S/o.  
Najamuddin Khan,  
C/o. Sheikh Farooque, Gaddigodam,  
Quadripura, Opp: Laxman Daroga,  
Nagpur- 440 001

#### AWARD

(Dated: 16th February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bharat Sanchar Nigam Ltd. and their workman, Shri Salahuddin Khan, for adjudication, as per letter No.L-40012/68/2005-IR (DU) dated 14.11.2005, with the following schedule:-

"Whether the management of Bharat Sanchar Nigam Ltd. through General Manager, Telecommunications, Akola is justified in terminating the services of Shri Salahuddin Khan S/o Najamuddin Khan w.e.f.

01.02.2002? If not, to what relief the concerned workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Salahuddin Khan, ("the workman" in short), filed the statement of claim and the management of Bharat Sanchar Nigam Ltd., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed on 01.06.2000 on daily wages as a driver by party no.1 and he worked as such till 01.02.2002 with artificial breaks and he has passed tenth standard and possesses a valid license to drive heavy motor vehicles and he is having all the requisites qualifications for appointment to the post of driver and he was being paid wages for the full week after working for six days @ Rs. 106.44 Paise per day, but he was not allowed to avail any other leave or other benefits given to regular employees of party no.1 and wages was not being paid to him for the day on which he was remaining on leave and he was continued on daily wages, in order to defeat his consequential benefits and regularisation in the post.

The further case of the workman is that he was asked orally by party no.1 to work regularly from 01.06.2000 as a driver, a group 'C' post on daily wages and one Shri Page expired in the year 1996 due to heart attack and since then, there was clear vacancy of the post of driver and he was performing the duty of a driver in the said clear vacancy and in the year 1998, driver Nikhade also expired and there were two clear vacancies and he had also applied for the post of driver by his applications dated 31.08.2000 and 13.10.2000, but he was orally terminated from service on 01.02.2002 without compliance of the provisions of the Act and thus, his termination was illegal and he made a representation dated 08.07.2002, but no action was taken on the same, so he filed Original Application No. 2144/2002 before the Central Administrative Tribunal, which was listed on 18.09.2003 and he withdrew the same with liberty to file appropriate proceedings, as the department of communication became a Public Undertaking and he submitted the approach notice dated 25.10.2004 to the party no.1 to reinstate him in service and to regularize his services and he is entitled for permanency to the post of driver, since he had performed the duties from 01.06.2000 to 01.02.2002 and completed 240 days of continuous service and the termination of his services orally by party no.1 dated 01.02.2002 was not justified and as the same was without following the procedure laid down under the Act and thus ex-facie illegal and since the date of his termination, he is not gainfully employed and he is entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

3. In the written statement, after denying all the adverse allegations made in the statement of claim, the party no.1

has pleaded inter-alia that the reference is not maintainable, in view of the order passed by the Central Administrative Tribunal on 25.09.2003, dismissing the Original Application filed by the workman for want of jurisdiction and the present reference is liable to be answered in the negative.

It is further pleaded by party no.1 that the workman was never appointed as a driver, but his services were availed by it as and when required and he was paid for the services rendered by him and the workman did not fulfill all the requisite qualifications to perform the duty of the driver and the workman was asked to perform the duty of the driver as and when his services were required on adhoc arrangement and the department of Telecommunication was run by Government of India and was guided by the Rules and Regulations of the Department of Telecommunication.

It is further pleaded by party no.1 that it had taken steps for recruitment of driver on the directions of the Corporate office and public notification was circulated in the daily newspaper and the workman and other candidates submitted their applications for the post of driver, but process of recruitment of the drivers was stayed on further instructions from its Corporate Authority and as such, it is not possible to consider the claim of the workman and recruitment to the post of driver is governed by the Drivers Recruitment Rules, 1999, which was further revised in 2001 and the workman having offered his candidature to the said selection process, which has been kept in abeyance for the time being has acquiesced to the selection process and that being so, he cannot now turn around and seek reinstatement, specifically when he was engaged on adhoc basis and it is settled proposition of law that adhoc engagement does not confer any right in favour of an employee and there being no master servant relationship between it and the workman, the reference is liable to be answered in the negative.

4. In support of their respective claims, both the parties led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness to prove his case. One Shri Ulhas Bhanudas Sutane has been examined as a witness by the party no.1.

5. The workman in his examination-in-chief on affidavit has reiterated the facts mentioned in the statement of claim. He has also proved his school leaving certificate, mark sheet, Employment Exchange registration card, cash receipts showing payment of wages to him by party no.1, copies of the applications filed by him for his recruitment as a permanent driver, copy of his application submitted to the General Manager, Telecom, Akola for his reinstatement, his approach notice dated 25.10.2004 and minutes of the conciliation proceedings held on 24.06.2005 as Exts. W-II to W-X respectively.

In his cross-examination, the workman has admitted that no appointment order was issued by the management

and his engagement by the management was on daily wages basis and O.A. case no. 2144/2002 was filed by him and O.A. case No. 2144/2002 was filed by Abdul Aleem before the Central Administrative Tribunal, Mumbai Branch at Nagpur and in response to the notification issued by the General Manager in the newspaper regarding appointment of drivers, he had applied for the said post and the recruitment process of recruiting drivers was stopped due to the ban order given by the Government. The workman has denied the suggestions that he was not engaged continuously and his engagement was as and when required and that he did not complete 240 days of work in any calendar year.

6. The witness examined by party no.1 also in his examination-in-chief on affidavit has reiterated the facts mentioned in the written statement.

However, in his cross-examination, the witness for party no.1 has stated that he does not know the workman personally and the workman was engaged on daily wages basis and he cannot say if the workman was engaged from 01.06.2000 to 01.02.2002 on daily wages basis as a driver by their department and he cannot say if the workman had completed 240 days of work in each calendar year.

This witness has further admitted that drivers engaged on daily wages basis also maintain the log books of the respective vehicle driven by them and such log books are being counter signed by the concerned authorities and the log books maintained by the workman, which are available in the office have not been filed and except the available log books maintained by the workman, he did not verify any other document regarding the engagement of the workman and he cannot produce the log books available in the office and he also cannot say the number of log books available in the office.

7. During the course of argument, it was submitted by the learned advocate for the workman that the workman was appointed some time in 01.06.2000 on daily wages and he worked till 01.02.2002 with artificial breaks and he has all the requisite qualifications for appointment to the post of driver and he was paid wages for the whole week after working for six days and such fact shows that actually the workman worked continuously from 01.06.2000 to 01.02.2002 and the services of the workman were illegally terminated by party no.1 orally on 01.02.2002 and the appointment of the workman was in clear vacancy of the post of driver, as the regular drivers working with party no.1, Page and Nikhade died in 1996 and 1998 respectively and even though, the workman had completed more than 240 days of work in every calendar year, his services were terminated without compliance of the mandatory provisions of Section 25-F of the Act, his termination was illegal and such facts have been amply proved from the evidence adduced by the workman and the evidence of the witness of the party no.1.

It was further submitted by the learned advocate for the workman that an application had been filed on behalf of the workman for a direction to the party no.1 for production of documents regarding the appointment of the workman, including the log book maintained by the workman in respect of the vehicle he was driving, but party no.1 denied the maintenance of the log books by the workman, so this Tribunal rejected the application and it is clear from the documents filed by the workman, the admission of the witness examined by the party no.1 and the suggestions given to the workman regarding the log book in his cross-examination clearly show that on a false plea, the party no.1 withheld the best evidence available to decide the dispute and played fraud with the Tribunal and for withholding vital documents and playing fraud, adverse inference has been drawn against the party no.1 and after the termination of the services of the workman, he has not been able to get an employment and he is not gainfully employed and the workman is entitled for reinstatement and regularisation in service with continuity, full back wages and all other consequential benefits.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2010 II CLR-1 (Anoop Sharma Vs. Executive Engineer), 2012 II CLR-796 (Executive Engineer Vs. Vitthal Mahapatra Kale) and 2013(2) Bom. LC -396(SC) (Director of Horticulture Vs. HA Kumar)

8. Per contra, in the written notes of argument, the learned advocate for the party No.1 has submitted that the workman was never appointed as a driver by the party No.1 but his services were availed as and when required and the workman did not fulfill all the requisite qualifications to perform the duty of the driver and recruitment to the post of driver is governed by "Driver Recruitment rule, 1999", which was further revised in 2001 and adhoc arrangement does not confer any right in favour of the workman and such subject matter was decided by the CGIT, Mumbai in reference case No.06/2003 by award dated 01.08.2006 and the workman having similarly placed has no right to seek reinstatement and absorption.

It has been further mentioned by the learned advocate for the Party No.1 that the workman in his cross-examination has admitted that his engagement by the management was on daily wages basis and he was paid wages for the full week after working for six days and the workman has not filed any document on record to show that he had worked for 240 days in one calendar year and the witness for the management has also stated that the workman was engaged on daily wages basis and the burden of proof that he had worked for 240 days in one calendar year was on the workman, as per the judicial precedents and the workman has failed to prove the same and the engagement of a workman on daily wages does not confer any right on him for claiming regularisation and the reference is also for adjudication about the termination,

hence question of regularisation of the workman does not arise and as the workman was engaged on daily wages, the question of his termination or compliance of the provisions of Section 25-f of the Act does not arise and the workman is not entitled to any relief.

9. At the outset, it is to be mentioned that original application No.2144/2002 filed by the workman before the CAT concededly was not adjudicated on merit. As the said OA was dismissed by the Hon'ble CAT, on the ground of its having no jurisdiction, the workman cannot be denied the remedy available to him in another jurisdiction in terms of the provisions of the statute.

10. Perused the record including the statement of claim, written statement, the evidence, both oral and documentary adduced by the parties and considered the submissions made by the learned advocates for the parties. Though at one hand the workman has claimed that he was appointed as a driver by the party no.1, on the other, he has stated that his appointment was on daily wages basis. The workman has admitted that no appointment order was issued by the party no.1. The documents, Ext. W-II to W-X filed by the workman and the oral evidence adduced by the parties show that the workman was engaged by the party No.1 as and when required. There is nothing on record to show that the workman was appointed by party No.1 by following the due procedure of appointment applicable to party no.1 or that his engagement was against any permanent vacancy.

11. The claim of the workman is that though he had completed 240 days of service prior to his illegal oral termination from service w.e.f. 01.02.2002, the mandatory provisions of Section 25-F of the Act were not complied with. The party no.1 has denied the claim of the workman.

In view of such pleadings, I think it apposite to mention about the principles enunciated by the Hon'ble Apex Court regarding the application of provisions of Section 25-B and 25-F of the Act.

12. The Hon'ble Apex Court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. their workmen) have held that:-

"Though Section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of "Continuous Service" need not be read into Section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended Section 25-B only consolidates the provisions of Section 25(B) and 2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of Section 25-F of the principal Act by substituting in clause (b) the



words “for every completed year of continuous service” has removed a discordance between the un-amended section 25 B and the un-amended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the un-amended section 25-B”.

13. In the decision reported in AIR 1981 SC-1253 (Mohanlal Vs. M/S Bharat Electronics Ltd.), the Hon’ble Apex Court have held that,

“Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression “continuous”. Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A”.

14. The Hon’ble Apex Court in the decision reported in AIR 2003 SC-38 (M/S Essen Deinay Vs. Rajeev Kumar) has held that:

“Industrial Disputes Act (14 of 1947)— S. 25-F, 10-Retrenchment compensation—Termination of services without payment of—Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination—Claim denied by management—Onus lies upon claimant to show that he had in fact worked for 240 days in a year—In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.”

15. In the judgment reported in (2006) 1 SCC-106 (R.M. Yellatti Vs. Asstt. Executive Engineer), the Hon’ble Apex Court have held that:-

“Labour Law-Industrial disputes Act, 1947-Ss. 25-F, 25-B, 11 and 10-Requirement of 240 days’ continuous service-Onus to prove-Evidence to be led-Applicability of Evidence Act, 1872-Held burden of proof lies on workman. It is for the workman to adduce cogent evidence, both oral and documentary-Mere affidavits or self serving statements made by the workman will not suffice-Evidence Act not applicable to proceedings under section 10 I.D. Act.”

16. So, it is clear from the principles enunciated by the Hon’ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary for the workman by leading cogent evidence, both oral and documentary to prove that in fact he had worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon’ble Apex Court, now, the present case at hand is to be considered.

17. In support of his claim, the workman besides placing reliance on his own evidence on affidavit has relied on the documents, Exts.W-II and W-X. Ext. W-X is the copy of the minutes of the conciliation proceedings held on 24.06.2005 recorded by the Regional Labour Commissioner, (Central), Nagpur. According to Ext. W-X, the workman worked for 155 days from 23.07.2001 to 02.02.2002. Ext W-X also discloses that the representative for the party No.1 disclosed before the Conciliation Officer that log book of the vehicle, which the workman was driving for the period from 01.01.2001 to 27.07.2001 was not available. It is to be mentioned here that in the written statement, party no.1 has not made any specific denial that the workman did not complete 240 days of work in the preceding 12 calendar months of 01.02.2002. Party no.1 in the written statement has pleaded that, “It is specifically denied that party no.2 (workman) is entitled for permanency since he has worked from 01.06.2000 till 01.02.2002 and had completed 240 days of continuous service in one calendar year. Rather, it can be inferred from the said pleadings that even though the workman worked from 01.06.2000 till 01.02.2002 and completed 240 days of continuous service in one calendar year, he is not entitled for claiming permanency in service. In the specific pleadings made in the written statement though party no.1 has stated that the workman was engaged as and when required, it has not stated as to the actual days of engagement of the workman and there is also no denial that the workman did not work for 240 days in the preceding 12 calendar months of 01.02.2002.

Admittedly, log books were maintained by the workman during the course of his engagement on daily wages basis. The workman had filed an application to direct the party no.1 for production of the log books maintained by him, but party no.1 took a false plea that

such log books were not maintained. Before the conciliation officer, party no.1 furnished information about such log books. Ext. W-X or the contents thereof have not been disputed by party no.1. Witness for the party no.1 has also admitted about the availability of the log books maintained by the workman in the office. However, without any reasonable cause, party no.1 withheld the best evidence available for final and effective disposal of the dispute. Hence, adverse inference has to be drawn against the party no.1 for non-production of the log books maintained by the workman at least for the period from 01.02.2001 to 01.02.2002. Taking into consideration the evidence adduced by the workman and the facts and circumstances of the case in its entirety, it is held that the workman had in fact worked for 240 days in the preceding 12 calendar months of the date of his termination i.e. 01.02.2002.

18. Now, the only question remains for consideration is as to what relief or reliefs, the workman is entitled.

As already mentioned above, it was submitted by the learned advocate for the workman that it is clear from the evidence on record that the workman has all the requisite qualifications including driving license to drive light as well as heavy vehicles and even though, the workman had completed more than 240 days of work in the preceding 12 months of the date of his termination, the mandatory provisions of section 25-F of the Act were not complied with and from the date of his termination, he is not in gainful employment and therefore, he is entitled to reinstatement in service with continuity, full back wages and all other consequential benefits.

In support of his submissions, reliance was placed on the decisions reported in 2010 II CLR-(SC)-1(supra), 2012 II CLR-796(supra) and 2013 (2) Bom.LC-396(supra).

19. Per contra, it was submitted by the learned advocate for the party No.1 that the workman was engaged on daily wages basis and his engagement was not in accordance with the statutory rules of recruitment of drivers and even though, it is held that the workman had in fact worked for 240 days, he is not entitled to absorption, regularisation or reinstatement in service and the workman is not entitled to any relief.

The learned advocate for the party No.1 cited the decision of the Hon'ble Apex Court reported in AIR 2006 SC-1806(Secretary, State of Karnatak Vs. Umadevi) in support of the submissions.

20. At this juncture, I think it proper to mention that in the case of Umadevi as mentioned above, the effect of non-compliance of the mandatory provisions of section 25-f of the Act was not under the consideration of the Hon'ble Apex Court, which is the case in the case at hand. Hence, with respect, I am of the view that the decision reported in AIR 2006 SC-1806(supra) is distinguishable.

21. In the decision reported in 2010 II CLR-(SC)-(supra), the Hon'ble Apex Court have held that:-

“Held that (i) it is very well settled that one month's notice pay and compensation as per section 25-F (a) and (b) has to be given to the workman, before he is asked to go; (ii) finding recorded by the Tribunal cum Labour Court on the non-compliance of section 25-f was based on correct appreciation of pleadings and evidence on record-High Court committed serious error by setting aside the award of reinstatement (iii) No case pleaded by respondent before Labour Court that appellants was engaged/appointed without following statutory rules or Arts. 14 and 16 of Constitution of India-High Court not justified in coming to the said conclusion.”

22. In the decision reported in 2013 (2) Bombay LC-396(supra), the Hon'ble Apex Court have held that:-

“Industrial Disputes Act, 1947-Section 25 F-Reinstatement-High Court reinstated respondent on ground that respondent worked for more than 240 days in the year preceding to his termination and that he was not given either notice or retrenchment compensation-hence appeal-Held: there was breach of condition under section 25 -F, hence no interference warranted with order.”

23. In the decision reported in 2012 II CLR-796(supra), the Hon'ble Bombay High Court have held that:-

“Industrial Disputes Act, 1947-Ss10(1), 25-F-Reinstatement-Challenge to award for reinstatement with full back wages in favour of respondent-workman-Held that (i) though the workman was temporary-daily wager, he had worked for more than three years, but was terminated without compliance of procedure laid down u/s. 25-F of the Act(ii) the Labour Court rightly held the termination of workman unsustainable and invalid; (iii) no reason to interfere with the conclusions drawn by the Labour Court that the termination of service of the workman is illegal; (iv) but there is no justification for grant of full back wages-that part of award modified-back wages reduced to 50%.”

24. However, it is to be mentioned here that there are number of conflict decisions of the Hon'ble Apex Court including the recent decisions reported in 2103(5) SCC-136 (Assistant Engineer, Rajasthan development Corporation and another Vs. Gitam Singh) and 2014(1) Mh. LJ-151(Chief Administator, Housing Board, Haryana VS. Diwan Chand)

In the decision reported in (2013) 5 SCC-136(supra), the Hon'ble Apex Court have held that:-

“Labour Law-Industrial Disputes Act, 1947-Ss. 25-F and 11-A-Daily rated worker- Wrongful termination

of service-Relief-Compensation and not reinstatement-Factors to be taken into account while granting consequential relief-Distinction should be drawn between daily rated worker and worker holding regular post.”

25. In the decision reported in 2014(1) Mh. LJ-157(supra), the Hon'ble Apex Court have held that:-

“Industrial Disputes Act (14 of 1947), S.25-F-Respondent workman had put in more than 240 days service in a year when his service came to be terminated-non-compliance of section 25-F- Labour court awarded reinstatement with continuity of service without back wages- Respondent workman was out of service for a very long period-order passed by labour Court substituted by an award of compensation of Rs. 1 lakh.”

It is well settled that where there is conflict between decisions of co-equal benches of Hon'ble Supreme Court-Later decision should be followed. In view of such settled principles, the recent judgments of the Hon'ble Apex Court are to be followed.

In this case, the workman was initially engaged as daily wager driver by the party No.1 on 01.06.2000. His engagement continued for about 2 years up to 01.02.2002, i.e. about 13 years back. The engagement of the workman was not in accordance with the Rules of recruitment of drivers of party No.1. So, applying the principles enunciated by the Hon'ble Apex Court in the recent judgments as mentioned above and taking into consideration the entire facts and circumstances of the case, it appears to me that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In my considered opinion, the compensation of Rs.50,000/-(Rupees fifty thousand) only in lieu of reinstatement shall be appropriate. Hence, it is ordered:

### ORDER

The action of the management of BSNL through General Manager, Telecommunications, Akola in terminating the services of Shri Salahuddin Khan S/o. Najamuddin Khan w.e.f. 01.02.2002 is unjustified. The workman is entitled for monetary compensation of Rs. 50,000/- (Rupees fifty thousand) only in lieu of reinstatement. He is not entitled to any other relief. The party No.1 is directed to make the payment within one month of the publication of the award in the official gazette, failing which, the amount shall carry interest at the rate of 9 per cent per annum.

J. P. CHAND, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 463.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार

निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नागपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी/84/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-40012/67/2005-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 463.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/84/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02/03/2015.

[No. L-40012/67/2005-IR(DU)]

P. K. VENUGOPAL, Desk Officer

### ANNEXURE

**BEFORE SHRI J. P. CHAND, PRESIDING OFFICER,  
CGIT-CUM-LABOUR COURT, NAGPUR**

**Case No. CGIT/NGP/84/2005**

Date: 16.02.2015

**Party No. 1** : The General Manager, Telecom,  
Bharat Sanchar Nigam Ltd.,  
PO & Distt. Akola,  
Maharashtra

### Versus

**Party No. 2** : Shri Abdul Aleem S/o. Shri Abdul  
Saleem, C/o. Sheikh Farooque,  
Gaddigodam, Quadripura, Opp:  
Laxman Daroga, Nagpur- 440 001

### AWARD

(Dated: 16th February, 2015)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of section 10 of Industrial Disputes Act, 1947 (14 of 1947) (“the Act” in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of Bharat Sanchar Nigam Ltd. and their workman, Shri Abdul Aleem for adjudication, as per letter No.L-40012/67/2005-IR (DU) dated 26.10.2005, with the following schedule:-

“Whether the management of Bharat Sanchar Nigam Ltd. through General Manager, Telecommunications, Akola is justified in terminating

the services of Shri Abdul Aleem S/o. Shri Abdul Saleem w.e.f. 08.07.2002? If not, then to what relief the said workman is entitled?”

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Shri Abdul Aleem, (‘the workman’ in short), filed the statement of claim and the management of Bharat Sanchar Nigam Ltd. (‘Party No. 1’ in short) filed their written statement.

The case of the workman as presented in the statement of claim is that he was appointed sometime in the year 1994 on daily wages as a driver by party no.1 and he worked as such till 08.07.2002 with artificial breaks and he has passed XII standard and possesses a valid license to drive heavy motor vehicles and he is having all the requisites qualifications for appointment to the post of driver and he was paid wages at the rate of Rs. 40/- per day from 1994 to 1998 and from 1998 to 1999 at the rate of Rs.71.80 per day and from 1999 to 08.07.2002 at the rate of Rs. 106.66 per day and he was being paid wages for the full week after working for six days, but he was not allowed to avail any other leave or other benefits given to regular employees of party no.1 and wages was not being paid to him for the day on which he was remaining on leave and he was continued on daily wages, in order to defeat his consequential benefits and regularisation in the post.

The further case of the workman is that he was asked orally by party no.1 to work regularly from 06.03.1995 as a driver, a group ‘C’ post on daily wages and one Shri Page expired in the year 1996 due to heart attack and since then, there was clear vacancy of the post of driver and he was performing the duty of a driver in the said clear vacancy and in the year 1998, driver Nikhade also expired and there were two clear vacancies and he had been issued various certificates from time to time since 1995 and he had also applied for the post of driver by his applications dated 20.11.1996, 01.12.1997, 24.08.2000 and 13.10.2000, but he was orally terminated from service on 08.07.2002, without compliance of the provisions of the Act and thus, his termination was illegal and he made a representation dated 15.07.2002, but no action was taken on the same, so he filed Original Application No. 2143/2002, before the Central Administrative Tribunal, which was listed on 18.09.2003 and he withdrew the same with liberty to file appropriate proceedings, as the department of communication became a Public Undertaking and he submitted the approach notice dated 25.10.2004 to the party no.1 to reinstate him in service and to regularize his services and he is entitled for permanency to the post of driver, since he had performed the duties from 1995 to 08.07.2002 and completed 240 days of continuous service and the termination of his services orally by party no.1 dated 08.07.2002 was not justified and as the same was without following the procedure laid down under the Act and thus ex-facie illegal and since the date of his termination, he is not gainfully employed and he is

entitled for reinstatement in service with continuity, full back wages and all consequential benefits.

3. In the written statement, after denying all the adverse allegations made in the statement of claim, the party no.1 has pleaded inter-alia that the reference is not maintainable, in view of the order passed by the Central Administrative Tribunal on 25.09.2003, dismissing the Original Application filed by the workman for want of jurisdiction and the present reference is liable to be answered in the negative.

It is further pleaded by the party no.1 that the workman was never appointed as a driver, but his services were availed by it as and when required and the workman was paid for the services rendered by him and the workman did not fulfill all the requisite qualifications to perform the duty of the driver and the workman was asked to perform the duty of the driver as and when his services were required on adhoc arrangement and the department of Telecommunication was run by Government of India and was guided by the Rules and Regulations of the Department of Telecommunication.

It is further pleaded by party no.1 that it had taken steps for recruitment of driver on the directions of the Corporate office and public notification was circulated in the daily newspaper and the workman and other candidates submitted their applications for the post of driver, but process of recruitment of the drivers was stayed on further instructions from its Corporate Authority and as such, it is not possible to consider the claim of the workman and recruitment to the post of driver is governed by the Drivers Recruitment Rules, 1999, which was further revised in 2001 and the workman having offered his candidature to the said selection process, which has been kept in abeyance for the time being has acquiesced to the selection process and that being so, he cannot now turn around and seek reinstatement, specifically when he was engaged on adhoc basis and it is the settled proposition of law that adhoc engagement does not confer any right in favour of an employee and there being no master and servant relationship between it and the workman, the reference is liable to be answered in the negative.

4. In support of their respective claims, both the parties led oral evidence, besides placing reliance on documentary evidence. The workman has examined himself as a witness to prove his case. One Shri Ulhas Bhanudas Sutane has been examined as a witness by the party no.1.

5. The workman in his examination-in-chief on affidavit has reiterated the facts mentioned in the statement of claim. He has also proved his school leaving certificate, mark sheet, Employment Exchange registration card, experience certificates issued by the authorities of party No.1 in his favour, copies of the applications filed by him for his recruitment as a permanent driver, copy of his application submitted to the General Manager, Telecom, Akola for his reinstatement, his approach notice dated 25.10.2004 and



minutes of the conciliation proceedings held on 24.06.2005 as Exts. W-II to W-XXIII respectively.

In his cross-examination, the workman has admitted that no appointment order was issued by the management and his engagement by the management was on daily wages basis and O.A. case no. 2143/2002 was filed by him and O.A. case No. 2144/2002 was filed by Salahuddin Khan before the Central Administrative Tribunal, Mumbai Branch at Nagpur and in response to the notification issued by the General Manager in the newspaper regarding appointment of drivers, he had applied for the said post and the recruitment process of recruiting drivers was stopped due to the ban order given by the Government. The workman has denied the suggestions that he was not engaged continuously and his engagement was as and when required and that he did not complete 240 days of work in any calendar year.

6. The witness examined by the party no.1 also in his examination-in-chief on affidavit has reiterated the facts mentioned in the written statement.

However, in his cross-examination, the witness for party no.1 has stated that he does not know the workman personally and the workman was engaged on daily wages basis and he cannot say if the workman was engaged from 1994 to 08.07.2002 on daily wages basis as a driver by their department and he cannot say if the workman had completed 240 days of work in each calendar year.

This witness has further admitted that drivers engaged on daily wages basis also maintain the log books of the respective vehicle driven by them and such log books are being counter signed by the concerned authorities and the log books maintained by the workman, which are available in the office have not been filed and except the available log books maintained by the workman, he did not verify any other document regarding the engagement of the workman and he cannot produce the log books available in the office and he also cannot say the number of log books available in the office.

7. During the course of argument, it was submitted by the Learned Advocate for the workman that the workman was appointed in 1994 on daily wages and he worked till 08.07.2002 with artificial breaks and he has all the requisite qualifications for appointment to the post of driver and he was paid wages for the whole week after working for six days and such fact shows that actually the workman worked continuously from 1994 to 08.07.2002 and the services of the workman were illegally terminated by party no.1 orally on 08.07.2002 and the appointment of the workman was in clear vacancy of the post of driver, as the regular drivers working with party no.1, Page and Nikhade died in 1996 and 1998 respectively and even though, the workman had completed more than 240 days of work in every calendar year, his services were terminated without compliance of the mandatory provisions of section 25-F

of the Act, his termination was illegal and such facts have been amply proved from the evidence adduced by the workman and the evidence of the witness of the party no.1.

It was further submitted by the Learned Advocate for the workman that an application had been filed on behalf of the workman for a direction to the party no.1 for production of documents regarding the appointment of the workman, including the log book maintained by the workman in respect of the vehicle he was driving, but party no.1 denied the maintenance of the log books by the workman, so this Tribunal rejected the application and it is clear from the document, Ext. W-XXIII, the admission of the witness examined by the party no.1, it is clear that on a false plea, the party no.1 has withheld the best evidence available to decide the dispute and played fraud with the Tribunal and for withholding vital documents and playing fraud, adverse inference has been drawn against the party no.1 and after the termination of the services of the workman, he has not been able to get an employment and he is not gainfully employed and the workman is entitled for reinstatement and regularisation in service with continuity, full back wages and all other consequential benefits.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2010 II CLR-1 (Anoop Sharma vs. Executive Engineer), 2012 II CLR-796 (Executive Engineer Vs. Vitthal Mahapati Kale) and 2013(2) Bom. LC -396(SC) (Director of Horticulture Vs. H. A. Kumar)

8. Per contra, in the written notes of argument, the Learned Advocate for the party No.1 has submitted that the workman was never appointed as a driver by the party No.1 but his services were availed as and when required and the workman did not fulfill all the requisite qualifications to perform the duty of the driver and recruitment to the post of driver is governed by "Driver Recruitment rule, 1999", which was further revised in 2001 and adhoc arrangement does not confer any right in favour of the workman and such subject matter was decided by the CGIT, Mumbai in reference case No.06/2003 by award dated 01.08.2006 and the workman having similarly placed has no right to seek reinstatement and absorption.

It has been further mentioned by the Learned Advocate for the Party No.1 that the workman in his cross-examination has admitted that his engagement by the management was on daily wages basis and he was paid wages for the full week after working for six days and the workman has not filed any document on record to show that he had worked for 240 days in one calendar year and the witness for the management has also stated that the workman was engaged on daily wages basis and the burden of proof that he had worked for 240 days in one calendar year was on the workman, as per the judicial precedents and the workman has failed to prove the same

and the engagement of a workman on daily wages does not confer any right on him for claiming regularisation and the reference is also for adjudication about the termination, hence question of regularisation of the workman does not arise and as the workman was engaged on daily wages, the question of his termination or compliance of the provisions of section 25-F of the Act does not arise and the workman is not entitled to any relief.

9. At the outset, it is to be mentioned that original application No.2143/2002 filed by the workman before the CAT concededly was not adjudicated on merit. As the said OA was dismissed by the Hon'ble CAT, on the ground of its having no jurisdiction, the workman cannot be denied the remedy available to him in another jurisdiction in terms of the provisions of the statute.

10. Perused the record including the statement of claim, written statement, the evidence, both oral and documentary adduced by the parties and considered the submissions made by the Learned Advocates for the parties. Though at one hand the workman has claimed that he was appointed as a driver by the party no.1, on the other, he has stated that his appointment was on daily wages basis. The workman has admitted that no appointment order was issued by the party no.1. The documents, Ext. W-IV to W-XVI filed by the workman and the oral evidence adduced by the parties show that the workman was engaged by the party No.1 as and when required. There is nothing on record to show that the workman was appointed by party No.1 by following the due procedure of appointment applicable to party no.1 or that his engagement was against any permanent vacancy.

11. The claim of the workman is that though he had completed 240 days of service prior to his illegal oral termination from service w.e.f. 08.07.2002, the mandatory provisions of Section 25-F of the Act were not complied with. The party no.1 has denied the claim of the workman.

In view of such pleadings, I think it apposite to mention about the principles enunciated by the Hon'ble Apex court regarding the application of provisions of section 25-B and 25-F of the Act.

12. The Hon'ble Apex court, in the decision reported in AIR 1966 SC-75 (Employees, Digawadih Colliery Vs. their workmen) have held that:-

“Though section 25-F speaks of continuous service for not less than one year under the employer, if the workman has actually worked for 240 days during a period of 12 calendar months both the conditions are fulfilled. The definition of “Continuous Service” need not be read into section 25-B. The fiction converts service of 240 days in a period of twelve calendar months into continuous service for one complete year. The amended section 25-B only consolidates the provisions of section 25(B) and

2(eee) in one place, adding some other matters. The purport of the new provisions, however, is not different. In fact, the amendment of section 25-F of the principal Act by substituting in clause (b) the words “for every completed year of continuous service” has removed a discordance between the un-amended section 25 B and the un-amended Cl. (b) of section 25-F. No uninterrupted service is necessary if the total service is 240 days in a period of twelve calendar months either before the several changes or after these. The only change in the Act is that this service must be during a period of twelve calendar months preceding the date with reference to which calculation has to be made. The last amendment has now removed a vagueness which existed in the un-amended section 25-B”.

13. In the decision reported in AIR 1981 SC-1253 (Mohanlal Vs. M/S Bharat Electronics Ltd.), the Hon'ble Apex Court have held that,

“Industrial Disputes Act (14 of 1947). Section 25-B (1) and (2)- Continuous service-Scope of sub-sections (1) and (2) is different, (words and phrases-Continuous Service)

Before a workman can complain of retrenchment being not in consonance with Section 25-F, he has to show that he has been in continuous service for not less than one year under that employer, who has retrenched him from service. Section 25-B as the dictionary clause for the expression “continuous”. Both in principle and are precedent it must be held that section 25-B (2) comprehends a situation where a workman to not in employment for a period of 12 calendar months, but has rendered for a period of 240 days within the period of 12 calendar months commencing and counting backwards from the relevant date, i.e. the date of retrenchment. If he has, he would be deemed to be in continuous service for a period of one year for the purpose of section 25-B and chapter V-A”.

14. The Hon'ble Apex Court in the decision reported in AIR 2003 SC-38 (M/s. Essen Deinay Vs. Rajeev Kumar) has held that:

“Industrial Disputes Act (14 of 1947- S.25-F, 10-Retrenchment compensation-Termination of services without payment of –Dispute referred to Tribunal-Case of workman/claimant that he had worked for 240 days in a year preceding his termination- Claim denied by management-Onus lies upon claimant to show that he had in fact worked for 240 days in a year-In absence of proof of receipt of salary workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination.”

15. In the judgment reported in (2006) 1 SCC-106(R.M.Yellatti Vs. Asstt. Executive Engineer), the Hon'ble Apex Court have held that:-

“Labour Law-Industrial disputes Act, 1947-Ss. 25-F, 25-B, 11 and 10-Requirement of 240 days' continuous service-Onus to prove-Evidence to be led-Applicability of Evidence Act, 1872-Held burden of proof lies on workman. It is for the workman to adduce cogent evidence, both oral and documentary-Mere affidavits or self serving statements made by the workman will not suffice-Evidence Act not applicable to proceedings under section 10 I.D. Act.”

16. So, it is clear from the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above that for applicability of section 25-F of the Act, it is necessary for the workman by leading cogent evidence, both oral and documentary to prove that in fact he had worked for 240 days in the preceding 12 calendar months commencing and counting backwards from the relevant date and the burden of such proof is upon the workman. So, keeping in view the settled principles enunciated by the Hon'ble Apex Court, now, the present case at hand is to be considered.

17. In support of his claim, the workman besides placing reliance on his own evidence on affidavit has relied on the documents, Exts.W-IV to W-XXIII. Ext. W-XXIII is the copy of the minutes of the conciliation proceedings held on 24.06.2005 recorded by the Regional Labour Commissioner, (Central), Nagpur. According to Ext. W-XXIII, the workman worked for 288 days from 20.07.2001 to 08.07.2002. It is to be mentioned here that in the written statement, party no.1 has not made any specific denial that the workman did not complete 240 days of work in the preceding 12 calendar months of 08.07.2002. Party no.1 in the written statement has pleaded that, “It is specifically denied that party no.2 (workman) is entitled for permanency since he has worked from 1995 till 08.07.2002 and had completed 240 days of continuous service in one calendar year. Rather, it can be inferred the above from the said pleading that even though the workman worked from 1995 till 08.07.2002 and completed 240 days of continuous service in one calendar year, he is not entitled for claiming permanency in service. In the specific pleadings made in the written statement though party no.1 has stated that the workman was engaged as and when required, it has not stated as to the actual days of engagement of the workman and there is also no denial that the workman did not work for 240 days in the preceding 12 calendar months of 08.07.2002.

Admittedly, log books were maintained by the workman during the course of his engagement on daily wages basis. The workman had filed an application to direct the party no.1 for production of the log books

maintained by him, but party no.1 took a false plea that such log books were not maintained. Before the conciliation officer, party no.1 furnished information about such log books. Ext. W-XXIII or the contents thereof have not been disputed by party no.1. Witness for the party no.1 has also admitted about the availability of the log books maintained by the workman in the office. However, without any reasonable cause, party no.1 withheld the best evidence available for final and effective disposal of the dispute. Hence, adverse inference has to be drawn against the party no.1 for non-production of the log books maintained by the workman at least for the period from 09.07.2001 to 08.07.2002. Taking into consideration the evidence adduced by the workman and the facts and circumstances of the case in its entirety it is held that the workman had in fact worked for 240 days in the preceding 12 calendar months of the date of his termination i.e. 08.07.2002.

18. Now, the only question remains for consideration is as to what relief or reliefs, the workman is entitled.

As already mentioned above, it was submitted by the Learned Advocate for the workman that it is clear from the evidence on record that the workman has all the requisite qualifications including driving license to drive light as well as heavy vehicles and even though, the workman had completed more than 240 days of work in the preceding 12 months of the date of his termination, the mandatory provisions of section 25-F of the Act were not complied with and from the date of his termination, he is not in gainful employment and therefore, he is entitled to instatement in service with continuity, full back wages and all other consequential benefits.

In support of his submissions, reliance was placed on the decisions reported in 2010 II CLR-(SC)-1(supra), 2012 II CLR-796(supra) and 2013 (2) Bom.LC-396(supra).

19. Per contra, it was submitted by the Learned Advocate for the party No.1 that the workman was engaged on daily wages basis and his engagement was not in accordance with the statutory rules of recruitment of drivers and even though, it is held that the workman had in fact worked for 240 days, he is not entitled to absorption, regularisation or reinstatement in service and the workman is not entitled to any relief.

The Learned Advocate for the party No.1 cited the decision of the Hon'ble Apex Court reported in AIR 2006 SC-1806(Secretary, State of Karnatak Vs. Umadevi) in support of the submissions.

20. At this juncture, I think it proper to mention that in the case of Umadevi as mentioned above, the effect of non-compliance of the mandatory provisions of section 25-F of the Act was not under the consideration of the Hon'ble Apex Court, which is the case in the case at hand. Hence, with respect, I am of the view that the decision reported in AIR 2006 SC-1806(supra) is distinguishable.

21. In the decision reported in 2010 II CLR-(SC)-(supra), the Hon'ble Apex Court have held that:-

"Held that (i) it is very well settled that one month's notice pay and compensation as per section 25-F (a) and (b) has to be given to the workman, before he is asked to go; (ii) finding recorded by the Tribunal-cum-Labour Court on the non-compliance of section 25-F was based on correct appreciation of pleadings and evidence on record-High Court committed serious error by setting aside the award of reinstatement (iii) No case pleaded by respondent before Labour Court that appellant was engaged/appointed without following statutory rules or Arts. 14 and 16 of Constitution of India-High Court not justified in coming to the said conclusion."

22. In the decision reported in 2013 (2) Bombay LC-396(supra), the Hon'ble Apex Court have held that:-

"Industrial Disputes Act, 1947-Section 25 F-Reinstatement-High Court reinstated respondent on ground that respondent worked for more than 240 days in the year preceding to his termination and that he was not given either notice or retrenchment compensation-hence appeal-Held: there was breach of condition under section 25 -F, hence no interference warranted with order."

23. In the decision reported in 2012 II CLR-796(supra), the Hon'ble Bombay High Court have held that:-

"Industrial Disputes Act, 1947-Ss10(1), 25-F-Reinstatement-Challenge to award for reinstatement with full back wages in favour of respondent-workman-Held that (i) though the workman was temporary-daily wager, he had worked for more than three years, but was terminated without compliance of procedure laid down u/s. 25-F of the Act(ii) the Labour Court rightly held the termination of workman unsustainable and invalid; (iii) no reason to interfere with the conclusions drawn by the Labour Court that the termination of service of the workman is illegal; (iv) but there is no justification for grant of full back wages-that part of award modified-back wages reduced to 50%."

24. However, it is to be mentioned here that there are number of conflict decisions of the Hon'ble Apex Court including the recent decisions reported in 2103(5) SCC-136(Assistant Engineer, Rajasthan development Corporation and another Vs. Gitam Singh) and 2014(1) Mh. LJ-151(Chief Administator Housing Board, Haryana Vs. Diwan Chand)

In the decision reported in (2013) 5 SCC-136(supra), the Hon'ble Apex Court have held that:-

"Labour Law-Industrial Disputes Act, 1947-Ss. 25-F and 11-A-Daily rated worker- Wrongful termination

of service-Relief-Compensation and not reinstatement-Factors to be taken into account while granting consequential relief-Distinction should be drawn between daily rated worker and worker holding regular post."

25. In the decision reported in 2014(1) Mh. LJ-157(supra), the Hon'ble Apex Court have held that:-

"Industrial Disputes Act (14 of 1947), S.25-F-Respondent workman had put in more than 240 days service in a year when his service came to be terminated-non-compliance of section 25-F- Labour Court awarded reinstatement with continuity of service without back wages- Respondent workman was out of service for a very long period-order passed by Labour Court substituted by an award of compensation of Rs. 1 lakh."

It is well settled that where there is conflict between decisions of co-equal benches of Hon'ble Supreme Court-Later decision should be followed. In view of such settled principles, the recent judgments of the Hon'ble Apex Court are to be followed.

In this case, the workman was initially engaged as daily wager driver by the party No.1 in the year 1994. His engagement continued for about 8 years up to 08.07.2002, i.e. about 13 years back. The engagement of the workman was not in accordance with the Rules of recruitment of drivers of party No.1. So, applying the principles enunciated by the Hon'ble Apex Court in the recent judgments as mentioned above and taking into consideration the entire facts and circumstances of the case, it appears to me that the relief of reinstatement cannot be justified and instead monetary compensation would meet the ends of justice. In my considered opinion, the compensation of Rs.1,50,000/- (Rupees one lakh and fifty thousand only), in lieu of reinstatement shall be appropriate. Hence, it is ordered:-

### ORDER

The action of the management of BSNL through General Manager, Telecommunications, Akola in terminating the services of Shri Abdul Aleem S/o. Shri Abdul Saleem w.e.f. 08.07.2002 is unjustified. The workman is entitled for monetary compensation of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only), in lieu of reinstatement. He is not entitled to any other relief. The party No.1 is directed to make the payment within one month of the publication of the award in the official gazette, failing which, the amount shall carry interest at the rate of 9 per cent per annum.

J. P. Chand, Presiding Officer



नई दिल्ली, 2 मार्च, 2015

**का.आ. 464.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार राष्ट्रीय पादप अनुवांशिक संस्थान ब्यूरो, पी.यू.एस.ए. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 27/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2015 को प्राप्त हुआ था।

[सं. एल-42011/150/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 464.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 27/2014) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Rashtriya Padap Anuvanshik Sansthan Bureau, P.U.S.A. and their workmen, which was received by the Central Government on 26/02/2015.

[No. L-42011/150/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 27/2014**

Shri Giriraj & 27 others  
Delhi Karamchari Sangh,  
Regd. Affiliated Bhartiya Mazdoor Sangh,  
5239 Ajmeri Gate,  
New Delhi-110 006 ...Workman

#### Versus

Rashtriya Padap Anuvanshik Sansthan Bureau,  
P.U.S.A.,  
Pusa Campus,  
New Delhi-110 012 ...Management

#### AWARD

Central Government, vide letter No.L-42011/150/2013-IR(DU) dated 19.02.2014, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Rashtriya Padap Anuvanshik Sansthan Bureau in terminating the services of Shri Giriraj and 27 others, ex-beldars during pendency of conciliation proceedings with effect from 24.03.2013/12.04.2013(list enclosed) is justified or not? If not, what relief will be given to the workman and from which date?

2. On receipt of the above reference, notice was sent to the workman as well as the management. None appeared on behalf of the claimant. As such, this Tribunal ordered issuance of fresh notice to the workman. Despite sending notice, workman has not appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in the adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 24, 2015

A.C. DOGRA, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 465.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर म्युनिसिपल कारपोरेशन ऑफ दिल्ली के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 197/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2015 को प्राप्त हुआ था।

[सं. एल-42012/137/2012-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 465.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 197/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 26/02/2015.

[No. L-42012/137/2012-IR(DU)]

P. K. VENUGOPAL, Desk Officer

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,  
PRESIDING OFFICER, CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT  
NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No. 197/2012**

The General Secretary,  
Delhi Municipal Karamchari Ekta Union,  
780, Bali Maran, Chandni Chowk,  
Delhi ...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi,  
Karkardooma Court Complex,  
Town Hall, Chandni Chowk,  
Delhi

...Management

### AWARD

Central Government, vide letter No.L-42012/137/2012-IR(DU) dated 07.12.2012, referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of MCD in not granting the workman Shri Dharam Pal, S/o late Khajan yearly increments with effect from 08.07.2003 and upgradations under ACP Scheme and MACP scheme of the 6th Pay Commission is legal and justified? If not, what relief the workman is entitled to?”

2. On receipt of the above reference, notice was sent to the workman as well as the management. Though the claimant was represented by his authorized representative on a few occasions and sought time for filing claim statement, yet the same was not filed. However, later, neither the workman nor any authorized representative has appeared before the Tribunal so as to pursue his case. Thus, it is clear that the workman is not interested in the adjudication of the reference on merits.

3. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : February 23, 2015

A. C. DOGRA, Presiding Officer

नई दिल्ली, 2 मार्च, 2015

**का.आ. 466.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार रजिस्ट्रार, मणिपाल यूनिवर्सिटी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, बेंगलूर के पंचाट (संदर्भ संख्या सी आर संख्या 51/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 26/02/2015 को प्राप्त हुआ था।

[सं. एल-42012/18/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 466.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. C.R. No. 51/2008) of the Central Government Industrial Tribunal-cum-

Labour Court, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Registrar, Manipal University and their workman, which was received by the Central Government on 26/02/2015.

[No.L-42012/18/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BANGALORE

Dated : 16th February, 2015

**PRESENT :** Shri S. N. NAVALGUND, Presiding Officer

**CR No. 51/2008**

#### I Party

Shri Suraj,  
S/o Shri Raghavan,  
Sneha Laxmi, Kaprigudda,  
Mangalore - 1.

#### II Party

The Registrar,  
Manipal University,  
Manipal – 576 104.

#### Appearances :

I Party : Shri H. Mangalamba Rao,  
Authorised Representative

II Party : Sh. K. S. Bhat, Advocate

### AWARD

1. The Central Government vide Order No. L-42012/18/2008-IR(DU) dated 28.05.2008 in exercise of the powers conferred by Clause (d) of Sub-Section (1) and Sub-Section 2(A) of Section 10 of Industrial Dispute act, 1947 has made this reference for adjudication with following Schedule :

### SCHEDULE

“Whether Shri Suraj, Health Inspector, is a workman under the Industrial Dispute act, 1947? If yes, then whether the action of the management of Manipal University in terminating his services w.e.f. 27/03/2007 is legal and justified? If not, to what relief the workman is entitled to?”

2. On receipt of the reference while registering it in CR 51/2008 when notices were issued to both sides, Kum. Mangalamba Rao, Secretary, BMS Office appeared for I Party and filed the claim statement on 30.06.2008 and Sh. K. S. Bhat, Advocate filed vakalat for II Party and filed the counter statement on 26.03.2010.

3. The brief facts leading to this reference and award may be stated as under.

4. The I Party who was working as Health Inspector, Department of Community Medicine, KMC, Mangalore

was served with a letter of Dean, KMC, Mangalore dated 24.06.2006 stating that to renovate the community medicine department the room occupied by him next to Community Medicine Department on the 3rd Floor of KMC Building being required he has to vacate the same and sit in the MSFM office and handover the Attendance Register of House Keeping Staff to GM, MSFM by 28.06.2006 and there after the Dean by his proceedings dated 06.07.2006 directed to vacate the premises immediately and the telephone connection provided to him may be disconnected immediately and then on 24.07.2006 the Registrar kept him under suspension on the ground that he failed to vacate the premises despite the order of the superiors and then he was served with charge sheet for dishonoring orders of the superiors by not vacating the office premises occupied by him amounting to willfull insubordination of the superiors as under:

“Charge Sheet

In continuation of the above referred Memo/ Suspension order, we bring the following to your notice:

1. It has been alleged that, you have not vacated the office space occupied by you in the III floor of the college building at Mangalore even after several verbal and written instructions given to you.
2. The Dean of K.M.C. mangalore has instructed you vide letter dated 24th June 2006 to vacate the room which was occupied by you next to Community Medicine Department on the III Floor of K.M.C., Mangalore building. It was also informed to you that the room is required to be renovated as per the Medical Council of India guidelines.
3. Another letter dated 06.07.2006 was issued to you by the Dean since, even after repeated requests & Instructions you did not vacate the room. In this letter you were again clearly informed that the space is required for expansion of community Medicine to met the MCI requirements.
4. Again on July 13th 2006 another note has been issued to you by the Dean clearly instructing to vacate the office space and to move to the new space provided to you at the ground floor of the main college building and to hand over the key to the Head of the Department of Community Medicine.
5. Even after instructions given vide above mentioned letters and verbal requests you have not vacated the room.

6. Above conduct on your part is considered as willful disobedience shown by you and a very serious offence as per the service rules governing your employment. By your above act we are unable to renovate the room as per the guidelines of MCI. Till date, you have not vacated the room and you have locked it. This has caused inconvenience.
7. Further, we bring to your notice the following irregularities in discharging your duties which disclosed through your service records:
  - a) You were warned by memo dated 10.09.1998 for dereliction of duty for interference in the departmental work of the Biochemistry Department for having given directions to Ms. Sunanda with regard to the duty in variance with the standing instructions.
  - b) You were warned by proceedings dated 24.02.1999 for physically assaulting on Ms. Vidya, Sanitary Worker.
  - c) Dr. Chira Prakash Rao, Prof and Head of Anatomy in her letter dated 01.11.2001 to the Dean, had stated you had marked “A” in the Attendance Register against 2 sanitary workers on 01.11.2001 when she was not in her room and she requested the Dean to impress on you to stick to your job of maintaining the cleanliness of the various campuses and not to interfere in the smooth working of the department. Verbal warning were issued to this effect.
  - d) Dr. Ramdas Naik, Prof and Head of the Department of Pathology, in his letter dated 04.05.2004 had reported that you were unnecessarily interfering in the departmental affairs and instructing the House Keeping staff not to dispatch reports in Government Wenlock Hospital which leads to delay. The Dean was requested to instruct him not to interfere with the departmental work. Verbal warning were issued in this effect.
  - e) The Dean, KMC has issued a notice dated 08.09.2004 to you, informing that the corridors were not being kept clean and tidy and the toilets in each floor were kept very dirty.
8. On going through above past records, it is found that you have indulged in gross Indiscipline on several occasions earlier to this and many warnings/memos have been issued to you. In spite of this, you have not improved your conduct and behavior as a Health Inspector

of Medical College and continuing to indulge in indiscipline. Hence, Management has lost confidence in you since you have failed to discharge your duties, disobedient to the superiors.

9. The above referred conduct, behavior and actions on your part amounts to the Commission/omission of acts of misconduct of the following nature, as per the service rules applicable to our College/university:-

- a) Willful insubordination or disobedience of any lawful and reasonable order of superior.
- b) Commission of any acts subversive of discipline or good behavior.
- c) Negligence or neglect of work.
- d) The Unauthorised occupancy of MAHE premises.

You are hereby directed to, show cause within seven days of the receipt of this Charge Sheet as to why appropriate disciplinary action should not be initiated against you on above charges. If you fail to respond within the stipulate time it will be presumed that you have nothing to say in the matter and the Management shall proceed further as deemed fit under the circumstances.

You are also directed to vacate the room/office and hand over the key to the Dean, K.M.C. Mangalore which is in your custody.

REGISTRAR”

and appointing Sh. M. Purushotham Bhat as Enquiry Officer and Sh. H. S. Bhat as Management Representative the Domestic Enquiry was initiated. The Enquiry Officer while securing the presence of the I Party and the Management Representative observing the formalities of preliminary hearing and receiving the evidence of Dr. Sujan B. Somappa, Prof. & HOD Community Medicine and Mrs. Anet Soans, Clerk-2 as MW 1 and MW 2 for the management and exhibiting Ex M-1 to Ex M-21 and recording the statement of Mrs. Violet Lobo, House Keeping Staff, Sh. Janardhana K, House Keeping Staff, Sh. Chandrakanth, House Keeping Staff, Smt. Cristenia Menezes, House Keeping Staff and Sh. Sooraj/CSE as WW 1 to WW 5 and exhibiting Ex W-1 to Ex W-26 the detailed description of which are narrated in the annexure, after receiving the written brief from the Management Representative and the Defence Representative by his enquiry finding dated 05.03.2007 held CSE guilty of charges leveled against him. Then the Disciplinary Authority while giving a show cause notice dated 27.03.2007 after receiving the reply affording him an opportunity of hearing passed order dated 04.06.2007 Dismissing him from service. The Appellate Authority while affording an opportunity of

hearing since Dismissed the Appeal by Order dated 30.06.2007, the I Party approached the ALC(C), Mangalore and on his submission of FOC this reference came to be made for adjudication.

5. The I party in his claim statement asserted that though he was appointed as Health Inspector he was not being entrusted with Managerial Powers and not even supervisory powers and that the Domestic Enquiry was not conducted affording him fair and proper opportunities and that enquiry finding being not based on the evidence is perverse and even otherwise the punishment of Dismissal imposed for such trivial alleged misconduct is disproportionate etc. INTERALIA, in the counter statement filed by the II Party it is contended that the I Party was being Health Inspector – I was discharging Managerial and Administrative duties and his salary was also more than Rs. 1600 p.m., he cannot be treated as workman and that the Domestic Enquiry being conducted after affording all reasonable and fair opportunity and finding of the Enquiry Officer was based on the material placed before him, the same cannot be held as perverse and as the I Party inspite of oral and written requests failed to vacate the room/premises provided to him which was necessary to extend the area for use of community medicine department and thereby disobeyed the orders of his superiors he was not fit to continue in the service as such he was dismissed from service after holding enquiry, therefore the action of the management is just and proper.

6. After conclusion of the pleadings while raising Preliminary Issue as to whether I Party is a workman under Industrial Dispute Act and was posted for evidence on the same issue both the sides under the impression that the said issue on the fairness or otherwise of the Domestic Enquiry adduced the evidence on the same and also addressed their arguments. When the matter was taken up for Orders on the said issue the same was noticed and as the learned advocates appearing for the both sides since submitted they being under the impression Preliminary Issue was as to

“Whether the Domestic Enquiry held against the I Party by the II Party is fair and proper?”

having lead evidence and also addressed arguments on the same and the issue “Whether I Party is a workman under Industrial Dispute act being part of the reference issue to touching the fairness of Domestic Enquiry be framed and answered and looking to the result of that issue if necessary they may lead evidence on the workman issue and proceed in the matter. Accordingly while framing a Preliminary Issue as to “Whether the Domestic Enquiry conducted against the I Party is fair and proper, on the evidence already adduced by both the sides and arguments addressed on the said issue by order dated 27.10.2011 same came to be answered in the Affirmative holding that the Domestic Enquiry held was fair and proper



and when the parties were called upon to adduce evidence on the workman issue as well as victimization and being not gainfully employed, the Authorised Representative of the I Party while filing the affidavit of the I Party examining him on oath got marked Ex W-1 to Ex W-27 the detailed description of which are narrated in the annexure and also by filing the affidavit of I Party Union General Secretary examining him on oath as WW 2 got marked Ex W-28 to Ex W-35 the detailed description of which are narrated in the Annexure. Since Learned Advocate appearing for the II Party submitted that he has no rebuttal evidence the arguments addressed by both the sides were heard.

7. Since the Domestic Enquiry conducted by the II Party against the I Party is held as fair and proper by Order dated 27.10.2011, the Points that now remain for my considerations are :

**Point No. I :** Whether Sh. Suraj, Health Inspector is a workman under the Industrial Dispute act?

**Point No. II :** If so, whether the finding of the Enquiry Officer that he is guilty of the charges is perverse?

**Point No. III :** Whether the punishment of dismissal imposed is disproportionate to the alleged misconduct?

**Point No. IV :** What Order/Award?

8. On appreciation of the pleadings, oral and documentary evidence placed on record by both the sides, in the light of the arguments put forward by both the parties my finding on Point Nos. 1, 3 are in the affirmative, Point No. 2 in the Negative and Point No. 4 as per final order for the following

### REASONS

9. **Point No. I :** The II Party in its counter statement at Para 3 alleging that since I Party was working as Health Inspector-1, at KMC, Mangalore its constituent unit with supervisory duties and was working as Managerial and Administrative duties drawing salary more than Rs. 1600.00 per month he is not a workman and reference is liable to be rejected. The learned advocate appearing for the II party in his arguments as well urged that since I Party was designated as Health Inspector and his duties were supervisory in nature with monthly salary of Rs. 8740.00 which is admitted by him he cannot be treated as workman and reference is liable to be rejected and in support of this arguments he cited the decision of the Supreme Court in the case of *Burmah Shell Oil Storage and Distribution Company of India Limited vs. The Burma Shell Management Staff Association* and other reported in 1970(3) SCC Page 378. Since according to Section 2(s) of the Industrial Dispute act 'workman' means any person (including an apprentice) employed in any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and for the purpose of

proceedings in this act any such person who has been dismissed, discharged or retrenched or as a consequence, of that dispute, or whose dismissal, discharge or retrenchment has lead to that dispute but does not include any person mainly in a managerial or administrative capacity of being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature is ousted from this definition. On plain reading of the definition of the workman quoted above a person employed to do supervisory work cannot be ousted out of the definition of workman and only under exception (iv) if he is employed in a supervisory capacity drawing wages exceeding Rs. 10,000.00 p.m. and his functions are mainly of a managerial nature. In the present case as per revised job responsibilities of Health Inspector dated 26.08.1995 got marked as Ex M-1 in the cross-examination of WW 1(V) by way of confrontation I Party was to look after the sanitation of the KMC Campuses visiting its various campuses meeting the heads of the institutions/wardens/matrens/ manager etc. and discussing with them the problems of sanitation to take necessary measures for correcting them in keeping each department clean and in any case problem is noticed the same was to be brought to the notice of the concerned HOD. Therefore, as per the Job Responsibilities entrusted to the I Party though it was supervisory in nature in keeping the campuses clean he had no Managerial or Administrative status to fall under exception (iv) to the definition clause. Therefore, the contention of the II party that he is not a workman has no force. In the result, I arrive at conclusion of answering this point in the Affirmative.

10. **Point No. II :** There being no dispute that I Party who was working as Health Inspector-1, at KMC, Mangalore was provided with Office Space at the 3rd floor of the said college building and that in the month of June 2006 he was issued with letter dated 24.06.2006 by the Dean to vacate the said premises immediately on the ground that it was required to be joined to the community medicine premises the copy of which is produced at M-5 in the Domestic Enquiry and thereafter the Dean by his proceedings dated 06.07.2006 directing to vacate the premises immediately ordered for the telephone connection provided to him may be disconnected and then on 24.07.2006 the Registrar kept him under Suspension to vacate the premises, only because the I Party by giving a letter dated 22.07.2006 which he got marked as W-4 in the Domestic Enquiry as urged on his behalf he had expressed his willingness to vacate the premises before he was kept under suspension he was entitle for exoneration of charge the answer is no because nowhere in this letter he has expressed his willingness to vacate the premises or expressed any difficulty in shifting to the premises allotted to him and under this letter he has asked for only some

information about constitution of the Manipal Service Corp Facility Management (MSFM), names of directors/ partners of the said firm, names of supervisory personnel of the firm and a copy of Memorandum of Understanding between MAHE and MSFM. Therefore the contention urged on his behalf that though through his letter dated 22.07.2006 he expressed his willingness to vacate the premises the management hurried to keep him under suspension through order dated 24.07.2006 for disobedience is unacceptable. On the other hand it suggests his adamancy in not honouring the order of his Superior/Dean. Under the circumstances, absolutely I find no reason to say the finding of the Enquiry Officer the charge being proved is perverse necessitating the interference of this tribunal. Accordingly, I arrive at conclusion of answering this Point in the Negative.

11. **Point No. III and IV :** Though it is established from the documentary evidence that the I Party who was working as Health Inspector – 1, at KMC, Mangalore was provided with Office Space at the 3rd floor of the said college building and that in the month of June 2006 he was issued with letter dated 24.06.2006 to vacate the said premises immediately on the ground that it was required to be joined to the community medicine premises the copy of which is produced at M-5 in the Domestic Enquiry and thereafter the Dean by his proceedings dated 06.07.2006 directing to vacate the premises immediately also ordered the telephone connection provided to him may be disconnected and then on 24.07.2006 the Registrar kept him under Suspension and then he was issued with charge sheet dated 18.08.2006 and found guilty of the same by the Enquiry Officer which is now held to be not perverse, in view of the clear cut admission given by MW 1, HOD of the community medicine in the Domestic Enquiry that everyday after working hours the I Party used to keep the key of his premises in his/MW1 department which is recorded in Kannada and reads :

ಪ್ರ : ಆಪಾದಿತರು ಕರ್ತವ್ಯ ನಿರ್ವಹಿಸುತ್ತಿದ್ದ ಕೊಠಡಿಯು ಕೀಲಿ ಕರ್ತವ್ಯ ಮುಗಿಸಿ

ಹೋಗುವಾಗ ಪ್ರತಿನಿತ್ಯ ನಿಮ್ಮ ವಿಭಾಗದಲ್ಲಿ ಇಟ್ಟು ಹೋಗುತ್ತಿದ್ದರು ಅಲ್ಲವೇ?

ಉ : ಹೌದು.

even though the I Party failed to shift all his articles/ belongings to the newly allotted premises and actually handover the key either to MW 1 or any responsible persons in the management, the mighty management if the premises in his occupation was urgently needed could have taken steps to open the lock and shift all the belongings in that premises to the newly allotted premises to meet its immediate need. Since that was not done by the management it could be presumed that it was not in urgent need of that premises and in initiating a disciplinary enquiry though justified imposing the punishment of Dismissal is

too harsh and he could have been made to realise his disobedience of the orders of the superior by withholding or postponing one or two increments. Since the date of his suspension from service i.e., 24.07.2006 he having undergone ordeal of facing the Domestic Enquiry and then this process of dispute over a period of about 8 years, I feel that it is not necessary or proper to impose any punishment at this stage. However, having regard to the fact that I Party himself is responsible for facing the Domestic Enquiry and the ordeal of this dispute by his own attitude of not honouring the orders of the Domestic Enquiry to vacate the premises occupied by him though the management failed to rebut the evidence of the I party being gainfully employed. I feel it just and appropriate to order for his reinstatement with 50 % of the backwages, continuity of service and other benefits he would have received in the absence of the impugned punishment of Termination from Service. In the result, I pass the following.

#### ORDER

Though the alleged disobedience of the lawful orders of the Superior by the I Party in vacating the premises provided to him is found proved the punishment of termination from service being found disproportionate and at this stage it is not just and proper to impose any punishment the action of the management of Manipal University in Terminating his services which is infact from 04.06.2007 (not w.e.f. 27.03.2007 as mentioned in the schedule to the reference) is not legal and justified and that, I Party is entitle for reinstatement with 50% of backwages, continuity of service and other consequential benefits that he would have received in the absence of the impugned punishment order.

S. N. NAVALGUND, Presiding Officer

Annexure – I

#### Witnesses examined on behalf of II Party:

MW 1 – Sh. M Purushotham Bhat, Enquiry Officer

#### Witnesses examined on behalf of I Party:

WW 1(DE) – Sh. Suraj, I Party

WW 1(V) – Sh. Suraj, I Party

WW 2(V) – Sh. Purshotham, General Secretary

#### Documents exhibited on behalf of the Management in Domestic Enquiry

- |             |  |
|-------------|--|
| Ex M – 1    | : Memo dated 10.09.1998                |
| Ex M – 2    | : Complaint of Sushan dated 25.01.1999 |
| Ex M – 2(a) | : Memo dated 25.01.1999                |
| Ex M – 2(b) | : Letter of CSE dated 29.01.1999       |
| Ex M – 3    | : Proceedings dated 24.02.1999         |
| Ex M – 4    | : Notice dated 08.09.2004              |
| Ex M – 5    | : Notice to CSE dated 24.06.2006       |

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Ex M-6	: Fax information by HOD dated 22.07.2006
Ex M-7	: Proceedings dated 06.07.2006
Ex M-8	: Note by Dean dated 13.07.2006
Ex M-9	: Suspension Order dated 24.07.2006
Ex M-10	: Charge sheet dated 18.08.2006
Ex M-11	: Reply to the Chargesheet by CSE dated 28.08.2006
Ex M-12	: Notice of Enquiry with AD card
Ex M-13 to Ex M-20	: 8 Photographs
Ex M-21	: Memorandum by Employer dated 05.08.2006

**Documents exhibited on behalf of the CSE in Domestic Enquiry**

Ex W-1	: Circular by the Dean dated 25.01.2006
Ex W-2	: Note by Dean dated 13.07.2006
Ex W-3	: Letter by CSE dated 27.07.2006
Ex W-4	: Letter by CSE dated 22.07.2006
Ex W-5	: Reply to the suspension order by CSE dated 26.07.2006
Ex W-6	: Letter by CSE dated 26.06.2006
Ex W-7	: Testimonial issued to CSE dated 11.03.2000
Ex W-8	: Order of Dean dated 29.04.2006
Ex W-9	: Directions of the Dean dated 13.07.2006
Ex W-10	: Directions of the Dean dated 15.06.2006
Ex W-11	: Memo to CSE dated 17.06.2006
Ex W-12	: Confidential letter to CSE dated 19.06.2006
Ex W-13	: Confidential letter to CSE dated 20.06.2006
Ex W-14	: Explanation by CSE dated 21.06.2006
Ex W-15	: Confidential letter to CSE dated 23.06.2006
Ex W-16	: Explanation letter by CSE dated 24.06.2006
Ex W-17	: Endorsement to CSE dated 07.07.2006
Ex W-18	: Letter from CSE dated 22.07.2006
Ex W-19	: Circular by Dean dated 24.07.2006
Ex W-20	: Letter to CSE dated 24.07.2006
Ex W-21	: Reply by CSE dated 16.08.2006

Ex W-22	: Photocopy of Delivery Book Page No. 105 from 24.07.2006 to 28.07.2006
Ex W-23	: Letter to HOD by Dean dated 06.07.2000
Ex W-24	: Note by Dean dated 22.07.2006
Ex W-25	: Proceedings of Dean dated 06.07.2006
Ex W-26	: Attendance of Staff KMC Page No. 7 of July 2006

**Documents exhibited on behalf of the Management on Workman and Victimization**

Ex M-1	: Revised Job responsibilities of Health Inspector dated 26.08.1995
Ex M-2	: Eight leave letters with I Party recommendation
Ex M-3	: Seven letters addressed by I Party to Dean under I Party signature

**Documents exhibited on behalf of the I Party on Workman and Victimization**

Ex W-1	: Pay Slip of I party for the month of January 2006
Ex W-2	: Pay Slip of I party for the month of January 2004
Ex W-3	: Copy of circular dated 31.03.2006
Ex W-4	: Letter of deployment issued to I Party dated 29.04.2006
Ex W-5	: Letter of the management dated 15.06.2006
Ex W-6	: Memo issued by the Management dated 17.06.2006
Ex W-7	: Copy of letter while handing over the keys to Dr. B S Sajjan dated 26.07.2006
Ex W-8	: Copy of circular dated 25.01.2006
Ex W-9	: Copy of the letter issued by II Party to I Party dated 24.06.2006
Ex W-10	: Copy of note dated 13.07.2006
Ex W-11	: Copy of letter of II Party issued to Dean dated 22.07.2006
Ex W-12	: Copy of Note of II party dated 22.07.2006
Ex W-13	: Copy of letter of I party to II Party dated 22.07.2006
Ex W-14	: Copy of letter from Registrar to I Party dated 24.07.2006
Ex W-15	: Copy of letter from Registrar to I party dated 24.07.2006
Ex W-16	: Copy of I Party to the Registrar dated 26.07.2006

- Ex W – 17 : Copy of I Party to the Registrar dated 12.08.2006
- Ex W – 18 : Copy of Charge sheet dated 18.08.2006
- Ex W – 19 : Letter of I party to Registrar dated 28.08.2006
- Ex W – 20 : Notice of Enquiry dated 25.09.2006
- Ex W – 21 : Report of Enquiry dated 05.03.2007
- Ex W – 22 : Second Show cause Notice dated 27.03.2007
- Ex W – 23 : Order of Dismissal dated 27.03.2007
- Ex W – 24 : Letter of II Party to I party to vacate room dated 05.04.2007
- Ex W – 25 : Reply of Public Information Officer dated 13.06.2007
- Ex W – 26 : Appeal of the I party dated 28.06.2007
- Ex W – 27 : Reply of Registrar to the application of I party dated 20.07.2007
- Ex W – 28 : Reply of the Vice Chancellor to I party dated 27.08.2007
- Ex W – 29 : Notarized copy of the extract of register relating to members registration
- Ex W – 30 : Form C of I Party Union
- Ex W – 31 : Notice in Reference No. 136/2005
- Ex W – 32 : Copy of Petition filed before ALC(C), Mangalore
- Ex W – 33 : Copy of Order passed in W P No. 43521/2004
- Ex W – 34 : Resolution of office dated 25.01.2008
- Ex W – 35 : Resolution dated 05.07.2009 wherein the cause of this workman was taken up.

नई दिल्ली, 2 मार्च, 2015

**का.आ. 467.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 46/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-40012/87/2006-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 2nd March, 2015

**S.O. 467.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 46/2008)

of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 02/03/2015.

[No.L-40012/87/2006-IR(DU)]

P. K. VENUGOPAL, Desk Officer

**अनुबंध**

**केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर  
सी.जी.आई.टी. प्रकरण सं. 46/2008**

भरत पाण्डेय, पीठासीन अधिकारी

रेफरेन्स सं. एल-40012/87/2006-आईआर (डीयू)

दिनांक 09/01/2008

Shri Jitender Kumar Dixit S/o

Shri Madanmohan Dixit,

Vijendra Bhawan,

Khumbelo Ka Mohalla,

Thanagaji, Alwar.

**V/s.**

1. The Principal General Manager, Bharat Sanchar Nigam Limited, Doorsanchar Bhawan, C-Scheme Jaipur.
2. The Sub-Division Officer, Telecom, Bharat Sanchar Nigam Limited, Thanagaji, Alwar

प्रार्थी की तरफ से : श्री कुणाल रावत – एडवोकेट

अप्रार्थी की तरफ से : श्री टी.पी. शर्मा – एडवोकेट

**पंचाट**

दिनांक : 22. 01. 2015

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 09.01.2008 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

2. “Whether the action of the management of the SDO (T), Bharat Sanchar Limited, Thanagaji Distt., Alwar/ Principal General Manager, Bharat Sanchar Nigam Limited, Jaipur in terminating the services of their workman Shri Jitender Kumar Dixit, w.e.f. 01/02/2006, is legal and justified? If not, to what relief the workman is entitled to?”

3. स्टेटमेंट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः याची का कथन है कि याची विपक्षी के संस्थान में दिनांक 01.07.2001 को चतुर्थ श्रेणी



कर्मचारी के रूप में भर्ती हुआ और दिनांक 01.07.2001 से दिनांक 31.01.2006 तक लगातार कार्य किया। दिनांक 01.02.2006 को मौखिक आदेश से विपक्षी ने प्रार्थी को सेवामुक्त कर दिया। प्रार्थी ने संयुक्त श्रम आयुक्त एवं समझौता अधिकारी के समक्ष शिकायत प्रस्तुत की लेकिन विपक्षीगण की हठधर्मिता के कारण समझौता वार्ता सफल नहीं हुई। संयुक्त श्रम आयुक्त द्वारा असफलता के बाद प्रतिवेदन केन्द्र सरकार को भेजा गया लेकिन केन्द्र सरकार ने न्यायनिर्णयन हेतु मामले को न्यायाधिकरण को सुपुर्द नहीं किया। केन्द्र सरकार के मामले को न्यायनिर्णयन हेतु न्यायाधिकरण को न भेजने के फैसले के विरुद्ध प्रार्थी ने माननीय राजस्थान उच्च न्यायालय की जयपुर पीठ के समक्ष याचिका प्रस्तुत की जो स्वीकार की गयी और केन्द्र सरकार को निर्देशित किया गया कि प्रार्थी की सेवामुक्ति का विवाद न्यायनिर्णयन हेतु भेजा जाय।

4. आगे याचिका में यह कथन है कि विपक्षी द्वारा प्रार्थी की सेवामुक्ति का आदेश निम्न कारणों से अवैध एवं शून्य है :-

- क. क्योंकि प्रार्थी को सेवामुक्त करते समय विपक्ष द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ का पालन नहीं किया गया।
- ख. प्रार्थी द्वारा विपक्षी के यहां 240 दिन से अधिक कार्य किया गया है।
- ग. प्रार्थी के कार्य की प्रकृति स्थायी थी और आज भी उस कार्य की आवश्यकता है।
- घ. प्रार्थी विपक्षी संस्थान के अधिकारियों के दिशानिर्देश के अनुसार कार्य करता था।
- च. प्रार्थी की सेवामुक्ति अनुचित श्रम व्यवहार की परिभाषा में आती है।
- छ. प्रार्थी को सेवामुक्त करने से पूर्व वरिष्ठता सूची नहीं तैयार की गयी।
- ज. प्रार्थी की सेवामुक्ति विक्टिमाइजेशन की श्रेणी में आता है।
- झ. प्रार्थी की सेवामुक्ति प्राकृतिक एवं सामान्य नियमों के विरुद्ध है।
- ड. प्रार्थी की सेवामुक्ति बदले की भावना से प्रेरित है।
- द. प्रार्थी की सेवामुक्ति से औद्योगिक विवाद अधिनियम 1947 की धारा 25 जी एवं 25 एच का उल्लंघन हुआ है।
- य. प्रार्थी की सेवामुक्ति के पूर्व कोई नोटिस नहीं दी गयी और न नोटिस के बदले वेतन का भुगतान किया गया जबकि ऐसा किया जाना आज्ञापक था।
- ल. प्रार्थी सेवामुक्ति से बेरोजगार है।

5. उक्त आधार पर यह प्रार्थना की गयी है कि सेवामुक्ति का आदेश दिनांक 01.02.2006 को अवैध एवं शून्य घोषित करते हुए और सेवा की निरन्तरता को कायम रखते हुए समस्त लाभ सहित प्रार्थी को सेवा में पुनर्स्थापित करने का आदेश पारित किया जाय।

6. विपक्षीगण की तरफ से वादोत्तर प्रस्तुत कर याचिका के प्रस्तर 1, 2, 3, 4, 5 के कथन को अस्वीकार किया गया है और यह कहा गया है कि प्रार्थी को विपक्षी विभाग द्वारा कभी किसी पद पर नियुक्ति प्रदान नहीं की गयी। प्रार्थी का यह कथन गलत व मनगढ़ंत है कि वह दिनांक 01.07.2001 से दिनांक

31.01.2006 तक टेलिफोन सम्बन्धित शिकायत दूर करने और मरम्मत करने के लिए रखा गया था। यह भी कहा गया है कि जब विपक्षी विभाग द्वारा प्रार्थी की नियुक्ति नहीं की गयी तो उसे सेवामुक्त करने का प्रश्न नहीं उठता है।

7. वादोत्तर के प्रस्तर 4 में विपक्ष द्वारा दूरभाष केन्द्र थानागाजी में प्रार्थी से कार्यालय में दो मटके पानी भरने, केबल फाल्ट दूर करने के उद्देश्य से गड़ड़ा खोदने और अर्थ में पानी डलवाने का कार्य अनुबन्ध पर लिये जाने का तथ्य स्वीकार किया गया है जिसका भुगतान प्रार्थी को परिपत्र ए.सी.जी. 17 पर समय-समय पर किया जाने का कथन स्वीकार है। यह भी कहा गया है कि प्रार्थी ने केवल अनुबन्ध पर कार्य किया तथा उसने श्रम आयुक्त के यहां वाद प्रस्तुत किया था। प्रार्थी के मामले में श्रम मंत्रालय से यह फैसला आ चुका है कि प्रार्थी और विभाग के बीच नियोक्ता और कर्मचारी का रिश्ता नहीं है। यह भी कहा गया है कि विभाग द्वारा धारा 25 जी व 25 एच का उल्लंघन नहीं किया गया है तथा प्रार्थी ने कभी भी वर्ष में 240 दिन कार्य पूरा नहीं किया है।

8. प्रार्थी पक्ष द्वारा रिज्वायन्डर प्रस्तुत कर वादोत्तर के प्रस्तर 1 व 4 को अस्वीकार किया है। प्रस्तर 2, 3 व 5 के सम्बन्ध में कहा गया है कि जिस प्रकार वर्णित है वह स्वीकार नहीं है। अतिरिक्त कथन में यह कहा गया है कि प्रार्थी के कार्य में टेलिफोन से सम्बन्धित केबल फाल्ट की शिकायतें दूर करने के लिए गड़ड़े खोदे जाते थे, प्रार्थी इस कार्य को ऑफिस के समय में करता था और साथ ही पीने का पानी भरने और ऑफिस के छोटे-मोटे कार्य भी करता था। प्रार्थी की नियुक्ति टेलिफोन की शिकायतों को दूर करने के लिए की गयी थी। यह भी कहा गया कि क्षेत्रीय श्रम आयुक्त के फैसले की माननीय उच्च न्यायालय में चुनौती दी गयी थी जिसके आधार पर केन्द्रीय सरकार द्वारा न्यायनिर्णयन हेतु रेफरेन्स भेजा गया।

9. प्रार्थी की तरफ से याचिका के समर्थन में अभिलेखिय साक्ष्य के रूप में प्रदर्श डब्ल्यू-1 व प्रदर्श डब्ल्यू-2 प्रस्तुत है। प्रदर्श डब्ल्यू-1 (A.C.J. 17) अभिलेख के माध्यम से प्रार्थी श्री जितेन्द्र कुमार दीक्षित को दिनांक 18.1.2006 को 300 रु. का भुगतान साक्षी के समक्ष दर्शाया गया है जो पानी भरने के मद में है। प्रदर्श डब्ल्यू-2 वाटर चार्ज के सम्बन्ध में किये गये भुगतान का विवरण है जिसमें विभिन्न समयों का उल्लेख है। यह भुगतान किस व्यक्ति को किया गया है इसका उल्लेख नहीं है। किस व्यक्ति ने भुगतान प्राप्त किया उसका भी उल्लेख नहीं है। मौखिक साक्ष्य के रूप में प्रार्थी जितेन्द्र कुमार दीक्षित ने अपना शपथ पत्र प्रस्तुत किया है जिसके विरुद्ध प्रार्थी की विपक्ष द्वारा प्रतिपरीक्षा की गयी है।

10. विपक्ष की तरफ से कोई अभिलेखिय साक्ष्य प्रस्तुत नहीं किया गया है। श्री बाबू लाल मीणा, उपमण्डल अधिकारी तार, का शपथ-पत्र साक्ष्य में प्रस्तुत किया गया है जिनकी प्रतिपरीक्षा प्रार्थी पक्ष द्वारा की गयी है।

11. उभयपक्ष की तरफ से कोई अन्य प्रलेखिय या मौखिक साक्ष्य पत्रावली पर उपलब्ध नहीं है।

12. मैंने उभयपक्ष के विद्वान प्रतिनिधिगण की बहस सुनी तथा पत्रावली का सम्यक अवलोकन किया। विपक्ष की तरफ से लिखित बहस भी पत्रावली पर प्रस्तुत की गयी।

13. प्रार्थी जितेन्द्र कुमार दीक्षित के विद्वान अधिवक्ता द्वारा यह बहस की गयी है कि प्रार्थी ने विपक्षी के यहां दिनांक 01.07.2001 से दिनांक 31.01.2006 तक लगातान कार्य किया है और वर्ष में 240 दिन से अधिक कार्य किया है लेकिन धारा 25 एच औद्योगिक विवाद अधिनियम 1947 का पालन किये बिना विपक्ष ने प्रार्थी को सेवा से निष्कासित कर दिया है। यह बहस भी की गयी है कि प्रार्थी के कार्य की प्रकृति स्थायी थी और आज भी विभाग को उस कार्य की आवश्यकता है फिर भी प्रार्थी को सेवा से निष्कासित किया गया और प्रार्थी के साथ विपक्ष द्वारा अनुचित श्रम व्यवहार किया गया। यह बहस भी की गयी है कि कोई वरिष्ठता सूची तैयार नहीं की गयी है और विभाग द्वारा धारा 25 जी व धारा 25 एच औद्योगिक विवाद अधिनियम के प्राविधान का उल्लंघन किया गया है इसके विरुद्ध विपक्ष के विद्वान प्रतिनिधिगण द्वारा यह बहस की गयी है कि विपक्षी विभाग द्वारा कभी भी किसी पद पर प्रार्थी की नियुक्ति नहीं की गयी। प्रार्थी को केवल आकस्मिक कार्य के लिये आकस्मिक श्रमिक के रूप में ठेकेदार के माध्यम से अनुबन्ध पर रखा गया था, प्रार्थी को कभी नियुक्ति नहीं दी गयी, अतः उसे सेवामुक्त किये जाने का प्रश्न नहीं उठता है। लिखित बहस में यह उल्लेख भी किया गया है कि दूरभाष केन्द्र थानागाजी के कार्यालय में दो मटका पानी भरने, केबल-फाल्ट ठीक करने के लिये गड्ढा खुदवाने और अर्थ में पानी डलवाने आदि कार्य करने के लिये प्रार्थी को अनुबन्ध पर रखा गया था जिसका भुगतान उसे मौके पर कर दिया जाता था और प्रार्थी ने अपने बयान में यह स्वीकार भी किया है कि उसके द्वारा किये गये कार्य का सम्पूर्ण भुगतान प्राप्त हो चुका है। प्रार्थी ने केवल अनुबन्ध पर कार्य किया है। उभयपक्ष की उक्त बहस के सन्दर्भ में पक्षकारों के अभिवचनों और साक्ष्य की इस स्तर पर समीक्षा की जानी है।

14. जहां तक याचिका के कथन के सिद्ध होने का प्रश्न है प्रारम्भतः एवँ मूल रूप में याचिका के कथन को सिद्ध करने का भार प्रार्थी पर है। विपक्ष की तरफ से यह कहा गया है कि प्रार्थी को विपक्ष द्वारा कोई नियुक्ति प्रदान नहीं की गयी थी यह केवल अनुबन्ध पर कार्यरत था। विपक्ष के विद्वान अधिवक्ता ने मौखिक बहस में यह उल्लेख भी किया है कि दूरसंचार निगम लिमिटेड भारत सरकार का प्रतिष्ठित संस्थान है जहां किसी अधिकारी को यह अधिकारिता प्राप्त नहीं है कि समुचित नियुक्ति की प्रक्रिया अपनाये बिना कोई अधिकारी किसी व्यक्ति को नियुक्त कर ले। प्रार्थी के मामले में भी न कोई नियुक्ति की प्रक्रिया अपनायी गयी है और न ही कोई नियुक्ति प्रदान की गयी है। याचिका में प्रार्थी ने उल्लेख किया है कि विपक्षी के संस्थान में प्रार्थी दिनांक 01.07.2001 को चतुर्थ श्रेणी कर्मचारी के रूप में नियुक्त हुआ था और दिनांक 31.01.2006 तक लगातार कार्य किया व दिनांक 01.02.2006 को मौखिक रूप से सेवामुक्त कर दिया गया। अपने शपथ-पत्र में भी प्रार्थी ने प्रस्तर 1 में उक्त उल्लेख किया है लेकिन प्रतिपरीक्षा में प्रार्थी ने स्वीकार किया है कि उसे कोई नियुक्ति पत्र नहीं दिया गया था और जिस कार्य पर उसे लगाया गया था उसके सम्बन्ध में कोई विज्ञापन भी नहीं निकाला गया था तथा उसे आवश्यक कार्य के सम्बन्ध में उसे रखा गया था। यहां पर यह उल्लेखनीय है कि प्रार्थी के स्टेटमेंट आफ क्लेम का यदि सम्यक व सूक्ष्म अवलोकन किया जाये तो यह जाहिर होगा कि प्रार्थी ने याचिका के किसी भी प्रस्तर में इस बात का उल्लेख नहीं किया कि उसकी नियुक्ति किस कार्य के लिए हुई थी अथवा विपक्षी के

यहां अपने कथित कार्यकाल के दौरान उसने किस प्रकृति के कार्य का निष्पादन किया। इस बात का भी उल्लेख नहीं है कि उसकी नियुक्ति किस पद पर हुई थी और वेतन क्या था। केवल चतुर्थ श्रेणी कर्मचारी के रूप में भर्ती होने का उल्लेख है। अपने शपथ-पत्र में भी प्रार्थी ने उक्त आशय का कोई उल्लेख नहीं किया है और प्रस्तर 1 में यह कहा है कि उसने फोन मेकेनिक के रूप में कार्य किया है। प्रार्थी द्वारा किये जाने वाले कार्य का उल्लेख पहली बार विपक्षी के वादोत्तर के प्रस्तर 4 में मिलता है जिसमें कहा गया है कि प्रार्थी से कार्यालय में दो मटके पानी भरवाने, केबल फाल्ट के लिए गड्ढे खोदने और अर्थ में पानी डलवाने आदि का कार्य अनुबन्ध पर लिया गया है। प्रार्थी की नियुक्ति तथा कार्य की प्रकृति के सम्बन्ध में विपक्षी साक्षी श्री बाबूलाल मीणा, उपमण्डल अधिकारी तार के साक्ष्य से प्रार्थी के पक्ष में कोई मदद नहीं मिलती है। साक्षी ने प्रस्तर 3 में शपथ-पत्र में यह उल्लेख किया है कि प्रार्थी को आकस्मिक कार्य के लिये ठेकेदार के माध्यम से अनुबन्ध पर आकस्मिक श्रमिक के रूप में रखा गया था। प्रार्थी पक्ष द्वारा न्यायालय के समक्ष प्रार्थी की हाजरी रजिस्टर, वेतन रजिस्टर, मस्टर रोल और भुगतान वाउचर विपक्ष के कब्जे से तलब करने के लिए प्रार्थना-पत्र प्रस्तुत की गयी है जिसके विरुद्ध आपत्ति में यह कहा गया है कि दस्तावेज तलब कराने से सम्बन्धित प्रार्थना-पत्र काल्पनिक है क्योंकि जिन दस्तावेजों की मांग की गयी है उस प्रकार के दस्तावेज विपक्षी के यहां कभी उपलब्ध नहीं रहे हैं। न्यायाधिकरण के निर्देश पर श्री राम दयाल मीणा S.D.O. का शपथ-पत्र भी प्रस्तुत किया गया है जिसमें आपत्ति में प्रस्तुत कथन की पुनरावृत्ति की गयी है व यह कहा गया है कि कार्य आकस्मिक प्रकृति का होने के कारण मांगे गये दस्तावेज विपक्षी विभाग के कार्यालय में नहीं हैं व उक्त दस्तावेज कभी भी उनके पास नहीं रहे हैं। प्रार्थी पक्ष के विद्वान अधिवक्ता की तरफ से बहस के दौरान यह उल्लेख किया गया है कि विपक्ष द्वारा अभिलेखों को प्रस्तुत न करने के कारण उनके विरुद्ध प्रार्थी के पक्ष में प्रतिकूल अवधारणा ग्रहण की जानी चाहिए और प्रार्थी का क्लेम स्वीकार होना चाहिये। जहाँ तक प्रतिकूल अवधारणा ग्रहण किये जाने का प्रश्न है। इस सम्बन्ध में उल्लेखनीय है कि किसी अभिलेख के सन्दर्भ में किसी पक्ष के विरुद्ध प्रतिकूल अवधारणा ग्रहण करने के पूर्व न्यायालय को इस बिन्दु पर सन्तुष्ट होना विधिक रूप से आवश्यक और अनिवार्य है कि अभिलेख कथित व्यक्ति के कब्जे और संरक्षण में है। इसके अभाव में विपक्षी के विरुद्ध प्रतिकूल अवधारणा ग्रहण नहीं की जा सकती। प्रार्थी पक्ष की तरफ से ऐसा कोई सुसंगत साक्ष्य नहीं प्रस्तुत किया गया है जिससे यह जाहिर हो कि विपक्षी के यहां प्रार्थी की अन्य कर्मचारियों के साथ उपस्थिति पंजिका में हाजिरी लगती थी अथवा वेतन भुगतान का बिल अन्य कर्मचारियों के साथ तैयार होता था। उक्त तथ्य एवं परिस्थिति में मैं इस निष्कर्ष पर हूँ कि वर्तमान मामले में अभिलेख के सन्दर्भ में विपक्षीगण के विरुद्ध प्रतिकूल अवधारणा ग्रहण करने की स्थिति मौजूद नहीं है।

15. जहां तक विपक्षी के यहां प्रार्थी की नियुक्ति का प्रश्न है यद्यपि विपक्षी ने स्वतः यह स्वीकार किया है कि अनुबन्ध पर ठेकेदार के माध्यम से विपक्षी के यहां प्रार्थी कार्यरत रहा है और प्रार्थी ने भी प्रदर्श डब्ल्यू-1 के माध्यम से इस तथ्य को साबित किया है कि विपक्षी के यहां प्रार्थी ने पानी भरने का कार्य किया है जिसके बदले में 300 रु. की धनराशि प्राप्त की है अतः विपक्ष की स्वीकृति

और प्रार्थी द्वारा प्रस्तुत प्रदर्श डब्ल्यू-1 से इस कथन की पुष्टि होती है कि प्रार्थी ने विपक्षी के यहां पानी भरने का कार्य किया है लेकिन पत्रावली पर उपलब्ध समस्त प्रलेखीय एवं मौखिक साक्ष्य से यह तथ्य साबित नहीं है कि प्रार्थी ने विपक्षी से कोई नियमित नियुक्ति प्राप्त की है

16. जहां तक विपक्षी के यहां प्रार्थी द्वारा कथित सेवामुक्ति की तिथि दिनांक 01.02.2006 के ठीक पूर्व केलेण्डर वर्ष में 240 दिन तक नियमित रूप से प्रार्थी द्वारा कार्य किया जाने का प्रश्न है इस सन्दर्भ में उल्लेखनीय है कि विपक्ष द्वारा इस तथ्य से इन्कार किया गया है कि प्रार्थी ने इनके यहां नियमित तौर पर प्रत्येक वर्ष में 240 दिन सेवा की है। प्रार्थी पक्ष द्वारा केवल नियमित रूप से दिनांक 01.07.2001 से दिनांक 31.01.2006 तक और 240 दिन से अधिक लगातार कार्य करने का उल्लेख याचिका एवं शपथ पत्र में किया गया है लेकिन इस सन्दर्भ में कोई विश्वसनीय प्रलेखीय साक्ष्य नहीं प्रस्तुत किया गया है। प्रार्थी की तरफ से प्रस्तुत प्रदर्श डब्ल्यू-2 में भुगतान का विवरण अंकित किया गया है जिसके सम्बन्ध में विपक्षी साक्षी द्वारा प्रतिपरीक्षा में इन्कार किया गया है और कहा गया है कि प्रदर्श डब्ल्यू-2 पर विपक्षी विभाग के अधिकारियों के हस्ताक्षर हैं या नहीं साक्षी नहीं बता सकता। प्रदर्श डब्ल्यू-2 को स्वयं प्रार्थी द्वारा साबित नहीं किया गया है और इस अभिलेख के अवलोकन से यह जाहिर नहीं होता है कि अभिलेख प्रार्थी से ही सम्बन्धित है। स्वयं प्रार्थी ने प्रतिपरीक्षा में प्रदर्श डब्ल्यू-2 के सम्बन्ध में यह स्वीकार किया है कि प्रदर्श डब्ल्यू-2 किस व्यक्ति द्वारा जारी किया गया है, इसका उल्लेख अभिलेख में नहीं है। तत्पश्चात साक्षी ने स्वयं कहा है कि इस अभिलेख पर सीनियर बाबू रामजीलाल मीणा तथा S.D.O. एस. डी. शर्मा के हस्ताक्षर हैं जिनके द्वारा भुगतान किया गया है। यह अभिलेख कब, किसने, किस उद्देश्य से तैयार किया और किससे सम्बन्धित है इसका उल्लेख भी अभिलेख पर नहीं है, अतः प्रदर्श डब्ल्यू-2 अभिलेख के सम्बन्ध में उभयपक्ष की साक्ष्य से यह स्पष्ट है कि प्रदर्श डब्ल्यू-2 साबित नहीं है और इस अभिलेख से सेवामुक्ति से ठीक पूर्व प्रार्थी द्वारा केलेण्डर वर्ष में 240 दिन लगातार सेवा करने के तथ्य की पुष्टि भी नहीं होती है। यह अभिलेख इस आधार पर भी 240 दिन की अवधि का मूल्यांकन करने के लिए पर्याप्त नहीं है क्योंकि इसमें केवल 2005 तक के भुगतान का उल्लेख है जबकि प्रार्थी ने दिनांक 31.01.2006 तक सेवा करने का उल्लेख किया है और अपने साक्ष्य में स्वीकार किया है कि जितना समय उसने कार्य किया है उस सम्पूर्ण अवधि के लिए भुगतान प्राप्त कर चुका है। उक्त प्रलेखीय व मौखिक साक्ष्य की व्याख्या व विश्लेषण के आधार पर मैं इस निष्कर्ष पर हूँ कि प्रार्थी सेवामुक्ति के ठीक पूर्व केलेण्डर वर्ष में 240 दिन लगातार कार्य करने के तथ्य को साबित नहीं किया है।

17. जहां तक प्रार्थी के कार्य की प्रकृति का प्रश्न है याचिका में प्रार्थी ने अपने कार्य की प्रकृति का उल्लेख नहीं किया है और न ही मासिक अथवा दैनिक वेतन भोगी के रूप में प्राप्त होने वाली धनराशि का उल्लेख किया है। प्रतिपरीक्षा में पृष्ठ 1 पर प्रार्थी ने यह कहा है कि उसे भुगतान वाटर चार्ज के रूप में किया जाता था लेकिन उसे केबल फाल्ट निकालने और गड्ढे खुदने का कार्य भी लिया जाता था। उल्लेखनीय है कि केबल फाल्ट निकालने का कार्य विशेषज्ञ तकनीशियनों द्वारा ही किया जाना सम्भव है जिन्हें तकनीकी प्रशिक्षण

प्राप्त होता है और उनके पास तकनीकी शैक्षणिक योग्यता भी होती है। प्रार्थी ने स्वयं पृष्ठ 3 पर स्वीकार किया है कि वह 9 वीं पास है अतः उसका कथन गलत व अतिशयोक्तिपूर्ण जाहिर होता है कि वह केबल फाल्ट भी निकालता था जो कार्य केवल एक प्रशिक्षित तकनीशियन ही कर सकता है। अतः प्रार्थी का यह कथन स्वीकार होने योग्य नहीं है कि वह केबल फाल्ट भी निकालता था एवं याचिका में भी ऐसा कोई उल्लेख नहीं है।

18. जहां तक धारा 25 जी एवं धारा 25 एच के उल्लंघन और वरिष्ठता सूची न बनाये जाने से सम्बन्धित नियम 77 के उल्लंघन का प्रश्न है इस सन्दर्भ में उल्लेखनीय है कि विपक्षी के विद्वान अधिवक्ता की तरफ से यह बहस की गयी है कि प्रार्थी औद्योगिक विवाद अधिनियम 1947 के प्राविधान का लाभ पाने का हकदार नहीं है और धारा 25 एफ के प्राविधान का लाभ भी प्रार्थी नहीं प्राप्त कर सकता तथा वह किसी भी प्रकार की नोटिस अथवा नोटिस के बदले वेतन भुगतान का हकदार नहीं है। यह बहस भी की गयी है कि प्रार्थी आकस्मिक श्रमिक के रूप में नियुक्त था इसलिये विपक्ष द्वारा कोई सेवामुक्ति पत्र देना भी आवश्यक नहीं था। औद्योगिक विवाद अधिनियम 1947 की धारा 25 जी निम्न व्यवस्था प्रदान करती है :-

“धारा 25-छ में छंटनी के लिए प्रक्रिया- जहां कि किसी औद्योगिक स्थापन के किसी ऐसे कर्मकार की, जो भारत का नागरिक है छंटनी की जानी हो और यह उस स्थापन के कर्मकारों के किसी विशिष्ट प्रवर्ग का हो, वहां, तब के सिवाय जबकि नियोजक ऐसे कारणों से, जिन्हें अभिलिखित किया जाएगा, किसी अन्य कर्मकार की छंटनी करता है, नियोजक और कर्मकार के बीच इस निमित्त हुए किसी करार के अभाव में नियोजक, मामूली तौर से और उस कर्मकार की छंटनी करेगा, जो उस प्रवर्ग में नियोजित किया जाने वाला अन्तिम व्यक्ति हो।”

19. उक्त सम्बन्ध में याचिका में प्रस्तर 5 में यह कहा गया है कि प्रार्थी की सेवामुक्ति से धारा 25 जी एवं धारा 25 एच का उल्लंघन किया गया है। धारा 25 जी प्राविधान के अनुसार यदि नियोक्ता द्वारा छंटनी की जानी है तो नियोक्ता और कर्मकार के बीच किसी करार के अभाव में उस व्यक्ति की छंटनी पहले की जावेगी जो सबसे बाद में नियुक्त हुआ था। प्रार्थी पक्ष द्वारा अपनी याचिका अथवा साक्ष्य में प्रस्तुत शपथ-पत्र में स्वयं इस बात का उल्लेख नहीं किया गया है कि विपक्षी के यहां नियुक्त याची के सदृश कर्मकारों में स्वयं याची की कहां स्थिति थी और संस्थान में अन्तिम कर्मकार कौन था। अतः धारा 25 जी के उल्लंघन के सम्बन्ध में याची पक्ष द्वारा कोई साक्ष्य प्रस्तुत नहीं है।

20. जहां तक धारा 25 एच के उल्लंघन का प्रश्न है धारा 25 एच औद्योगिक विवाद अधिनियम 1947 का प्राविधान निम्नवत है :-

“धारा 25-ज. छंटनी किए गए कर्मकारों का पुनः नियोजन-

‘जहां कि किन्हीं कर्मकारों की छंटनी की जाती है और नियोजक किन्हीं व्यक्तियों को अपने नियोजन में रखने की प्रस्थापना करता है, वहां वह उन छंटनी किए गए कर्मकारों को, जो भारत के नागरिक हैं, ऐसी रीति से, जैसी विहित की जाए, यह अवसर देगा कि पुनः नियोजन के लिए अपने को प्रस्थापित करें और छंटनी किए गए उन कर्मकारों को जो पुनः नियोजन के लिए अपने को प्रस्थापित करें अन्य व्यक्तियों पर अधिमान मिलेगा।”

21. उक्त प्राविधान में यह व्यवस्था है कि यदि किसी कर्मकार की छटनी की जाती है और उसके बाद नियोजक किन्हीं व्यक्तियों को अपने नियोजन में रखना चाहता है तो ऐसी स्थिति में छटनी किये गये कर्मकार को पुनः नियोजन का अवसर प्रदान किया जावेगा और यदि छटनी किया गया कर्मकार पुनर्नियोजन का इच्छुक है तो उसे अन्य व्यक्तियों की तुलना में वरियता दी जावेगी। प्रार्थी ने स्वयं अपनी प्रतिपरीक्षा में यह स्वीकार किया है कि 2006 के बाद नियुक्ति देने सम्बन्ध में कोई आवेदन विपक्षी के यहां प्रस्तुत नहीं किया है और विपक्षी ने भी नयी नियुक्ति के सम्बन्ध में कोई विज्ञापन नहीं निकाला है उक्त आधार पर यह स्पष्ट है कि प्रार्थी धारा 25 एच औद्योगिक विवाद अधिनियम का उल्लंघन साबित नहीं कर सका है।

22. याची पक्ष द्वारा याचिका में इस तथ्य का स्पष्ट उल्लेख नहीं किया गया है कि याची मासिक वेतन भोगी था अथवा दैनिक वेतन भोगी के रूप में कार्यरत था। जहां तक विपक्ष द्वारा अभिलेख प्रस्तुत न करने के कारण प्रतिकूल अवधारणा ग्रहण किये जाने का प्रश्न है और प्रार्थी के सन्दर्भ में धारा 25 एफ के उल्लंघन का प्रश्न है इस सम्बन्ध में 2006, सुप्रीम कोर्ट (एल.एण्ड एस.), 38 में माननीय सर्वोच्च न्यायालय द्वारा दी गयी विधि व्यवस्था उल्लेखनीय है।

23. 2006 सुप्रीम कोर्ट (एल.एण्ड एस.), 38, सुरेन्द्र नगर जिला पंचायत – अपीलार्थी बनाम दहयाभाई अमर सिंह – प्रत्यर्थी में प्रकरण के तथ्यानुसार प्रत्यर्थी की सेवा 15.8.85 के आदेश से समाप्त कर दी गयी थी। सेवा समाप्ति के लगभग सात साल बाद दिनांक 01.6.92 को प्रत्यर्थी ने अपीलार्थी को सेवा में पुनर्स्थापना की नोटिस भेजी और अन्ततः प्रत्यर्थी की सेवा समाप्ति का विवाद न्यायनिर्णयन हेतु औद्योगिक न्यायाधिकरण को सुपुर्द किया गया।

प्रत्यर्थी ने अपने स्टेटमेन्ट ऑफ क्लेम में यह उल्लेख किया कि वह सेवा समाप्ति के आदेश दिनांक 15.8.85 तक 10/- रुपये दैनिक मजदूरी पर अपीलार्थी की सेवा में था एवं सेवा समाप्ति के आदेश निर्गत होने के पूर्व औद्योगिक विवाद अधिनियम के प्राविधानों का पालन नहीं किया गया। श्रम न्यायालय के समक्ष प्रत्यर्थी की तरफ से एक आवेदन अपीलार्थी को निर्देश जारी करने के लिए प्रस्तुत हुई कि अपीलार्थी 1976 से 1986 तक की सेवा अवधि का वेतन रजिस्टर एवं मस्टर रोल प्रस्तुत करें। अपीलार्थी ने स्टेटमेन्ट ऑफ क्लेम के विरुद्ध यह कथन प्रस्तुत किया कि प्रत्यर्थी स्वयं काम पर आना बन्द कर दिया एवं उसे कोई स्थायी नियुक्ति नहीं दी गयी थी। वह मुतफर्का कार्यों के लिए नियुक्त था तथा जब काम होता था तो उसे बुला लिया जाता था। यह भी कहा गया कि कर्मचारी ने सेवासमाप्ति के ठीक पूर्व पूर्ववर्ती 12 माहों में 240 दिन तक लगातार कार्य नहीं किया है। यह भी कहा गया कि उसने सन् 82, 83 और 84 में क्रमशः 114, 63 और 124 दिन कार्य किया है अतः उसकी सेवाएं समाप्त करने के पूर्व धारा 25 (एफ) औद्योगिक विवाद अधिनियम में दी गयी प्रक्रिया का अनुपालन करने की विधिक आवश्यकता नहीं थी।

प्रत्यर्थी ने स्वयं को साक्ष्य में प्रस्तुत कर सशपथ कहा कि वह दस साल तक 470/- रुपये प्रतिमाह के वेतन पर नियुक्त था। अपीलार्थी की तरफ से एक कर्मचारी ने साक्ष्य में उपस्थित होकर कहा कि कर्मचारी ने कभी भी एक वर्ष में 240 दिन काम नहीं किया। श्रम न्यायालय ने प्रत्यर्थी के साक्ष्य पर भरोसा

किया और मस्टर रोल तथा 1976 से 86 तक की वेतन रजिस्टर न प्रस्तुत करने पर प्रतिकूल अवधारणा ग्रहण कर यह अवधारित किया कि प्रत्यर्थी ने 240 दिन से ज्यादा कार्य किया अतः उसकी सेवामुक्ति अवैधानिक थी। श्रम न्यायालय ने धारा 25 (एफ), 25 (जी) एवं 25 (एच) की प्रक्रिया का पालन न करने के कारण कर्मचारी को पुनर्स्थापना के लिए आदेशित किया एवं साथ ही पिछले वेतन की 20 प्रतिशत धनराशि अदा करने का निर्देश दिया।

माननीय उच्च न्यायालय की एकलपीठ ने श्रम न्यायालय के निर्णय की पुष्टि की तथा श्रम न्यायालय के निर्णय के विरुद्ध अपीलार्थी की याचिका खारिज की। एकल पीठ के निर्णय के विरुद्ध माननीय उच्च न्यायालय की खण्डपीठ ने लेटर्स पेटेंट अपील निरस्त की एवं यह अवधारित किया कि श्रम न्यायालय ने सही अवधारित किया है कि कर्मचारी ने मौखिक साक्ष्य से अपने कथन साबित किया है। माननीय खण्डपीठ ने श्रम न्यायालय द्वारा वेतन पंजिका, मस्टर रोल, तथा कर्मचारियों की वरिष्ठता सूची न प्रस्तुत करने पर ग्रहण की गयी प्रतिकूल अवधारणा को भी सही ठहराया। श्रम न्यायालय ने यह भी अवधारित किया कि प्रत्यर्थी की तुलना में एवं कनिष्ठ कर्मचारी की सेवा नियमित रूप से जारी रखी गयी और प्रत्यर्थी की सेवा समाप्त कर दी गयी।

माननीय सर्वोच्च न्यायालय के समक्ष माननीय उच्च न्यायालय की खण्डपीठ के निर्णय के विरुद्ध अपीलार्थी की यह बहस थी कि माननीय सर्वोच्च न्यायालय ने अपने अनेक निर्णयों में अत्यन्त स्पष्ट रूप से यह अवधारित किया है कि प्रारम्भिक तौर पर सिद्ध करने का दायित्व कर्मचारी पर है कि सेवा समाप्ति की तिथि के पूर्व एक वर्ष में कर्मचारी ने 240 दिन कार्य किया है जो दायित्व निर्वाह करने में कर्मचारी असफल रहा है। यह बहस भी की गयी कि 10 साल का अभिलेख प्रस्तुत न करने पर प्रतिकूल अवधारणा ग्रहण करने की कोई वजह नहीं थी। प्रत्यर्थी की तरफ से यह बहस की गयी श्रम न्यायालय ने प्रतिकूल अवधारणा अभिलेखों के सम्बन्ध में ग्रहण करके श्रम न्यायालय ने सही किया है क्योंकि नियोजक के कब्जे में अभिलेख थे अतः श्रम न्यायालय द्वारा माँग किये जाने पर उसे प्रस्तुत करना नियोक्ता का कर्तव्य था। यह बहस भी की गयी कि अभिलेख नियोक्ता के कब्जे में हैं इसलिए उसका दायित्व है कि वह सिद्ध करे कि सम्बन्धित अवधि में कर्मचारी ने 240 दिन कार्य नहीं किया है।

उभयपक्ष की उक्त बहस के परिपेक्ष्य में माननीय सर्वोच्च न्यायालय ने धारा 2 (ओओ), धारा 25 (बी) एवं 25 (एफ) की स्पष्ट एवं बोधगम्य व्याख्या करते हुए प्रस्तर 8 पृष्ठ 43 में कर्मचारी द्वारा तथ्यों को सिद्ध करने के दायित्व के सम्बन्ध में तथा छटनी की वैधानिकता के सम्बन्ध में यह अवधारित किया है, “To attract provisions of Section 25-F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry within the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25-B under the employer. These conditions are cumulative. If any of these conditions is missing the



provisions of Section 25 –F will not be attracted. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25-F of the Act.

The section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely:-

- (i) one month's clear notice in writing indicating the reasons for retrenchment or that the workman has been paid wages for the period of notice in lieu of such notice;
- (ii) payment of retrenchment compensation which shall be equivalent to 15 day's average pay for every completed year of continuous service or any part thereof, in excess of six months;
- (iii) a notice to the appropriate Government in the prescribed manner."

माननीय सर्वोच्च न्यायालय ने प्रस्तर 10 में (1980) 4 एस.सी.सी पृष्ठ 443, सुरेन्द्र कुमार वर्मा बनाम सेन्ट्रल गर्वमेंट इण्डस्ट्रीयल ट्रिब्यूनल कम लेबर कोर्ट में अपने पूर्णपीठ के फैसले सहित अनेक फैसलों का उल्लेख एवं उनकी व्याख्या करते हुए यह अवधारित किया है कि यह सिद्धान्त है कि सिद्ध करने का दायित्व कर्मचारी पर है कि वह दर्शाये कि कथित छटनी की तिथि के ठीक पूर्व एक वर्ष में उसने 240 दिन कार्य किया है और यह दायित्व भी उसी पर है वह स्वयं के साक्ष्य में परिक्षित कराने के अतिरिक्त साक्ष्य प्रस्तुत करें।

निर्णय के प्रस्तर 18 में माननीय सर्वोच्च न्यायालय ने उल्लेख किया है कि प्रत्यर्थी की तरफ से मौखिक साक्ष्य के अतिरिक्त कोई साक्ष्य 240 दिन कार्य करने के सम्बन्ध में नहीं प्रस्तुत किया गया है, न वेतन या मजदूरी के सम्बन्ध में कोई रसीद, या अभिलेख या आदेश प्रस्तुत है, न कोई सहकर्मचारी परिक्षित कराया गया, न ही नियोक्ता द्वारा प्रस्तुत मस्टर-रोल पर कोई खण्डन प्रस्तुत किया गया।

माननीय सर्वोच्च न्यायालय ने यह भी उल्लेख किया है कि यह असम्भव है कि कर्मचारी जो इतनी लम्बी सेवा करने का दावा करता है उसके पास नियोक्ता के अधीन सेवा में लगे रहने तथा कार्य की प्रकृति के सम्बन्ध में कोई अभिलेखीय साक्ष्य नहीं होगा। माननीय सर्वोच्च न्यायालय ने अवधारित किया कि कर्मचारी ने 240 दिन तक कार्य में संलग्न रहने के तथ्य को सिद्ध करने के दायित्व का निर्वाह नहीं किया है एवं विद्वान अधीनस्थ न्यायालयों ने नियोक्ता द्वारा 10 वर्ष का अभिलेख न प्रस्तुत करने के सम्बन्ध में प्रतिकूल अवधारणा गलत ग्रहण की है। माननीय सर्वोच्च न्यायालय ने यह अवधारित किया कि प्रत्यर्थी की सेवा समाप्ति के पूर्व प्रत्यर्थी को धारा 25 (एफ) की सुरक्षा अथवा अनुपालन का अधिकार नहीं था।

धारा 25 (जी) एवं 25 (एच) के अनुपालन के सम्बन्ध में यह साक्ष्य था कि दैनिक वेतन भोगी की सूची का रखरखाव अपीलार्थी द्वारा नहीं किया जाता। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि कर्मचारी की नियमित सेवा के अभाव में अपीलार्थी से दैनिक वेतन भोगियों की वरिष्ठता सूची के रख रखाव की उम्मीद नहीं की जा सकती है। अभिलेखों की माँग पर अपीलार्थी द्वारा न प्रस्तुत किये जाने पर धारा 114 (III) (जी) भारतीय साक्ष्य अधिनियम के अन्तर्गत न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण किये जाने के सम्बन्ध में माननीय सर्वोच्च न्यायालय ने यह अवधारित किया है कि ऐसी अवधारणा ग्रहण करने पूर्व न्यायालय के समक्ष कर्मचारी द्वारा इस बात का साक्ष्य प्रस्तुत करना होगा कि कोई वरिष्ठता सूची अस्तित्व में है अन्यथा प्रतिकूल अवधारणा ग्रहण करने की अनुतोष नहीं प्रदान की जा सकती। न्यायालय द्वारा प्रतिकूल अवधारणा ग्रहण करने हेतु अधिकार प्रदत्त होने के लिए न्यायालय को सन्तुष्ट होना अनिवार्य है कि साक्ष्य अस्तित्व में है और उसे सिद्ध किया जा सकता था। माननीय सर्वोच्च न्यायालय ने तदनुसार अपील स्वीकार की।

24. वर्तमान मामले के तथ्य एवं परिस्थितियों को दृष्टिगत रख यह स्पष्ट है कि माननीय सर्वोच्च न्यायालय द्वारा प्रदत्त उक्त विधि व्यवस्था वर्तमान मामले में लागू होती है। प्रार्थी के स्वयं के साक्ष्य एवं कथन के अनुसार यह स्पष्ट है कि धारा 25 जी एवं धारा 25 एच के प्राविधान उसके मामले में आकर्षित नहीं होते हैं और उक्त प्राविधान के सुरक्षा व अनुपालन पाने का प्रार्थी हकदार नहीं है। यह भी स्पष्ट है कि प्रार्थी इस तथ्य को सिद्ध करने में सफल नहीं है कि उसके और विपक्षी के बीच कर्मकार एवं नियोक्ता का सम्बन्ध है, अतः धारा 25 एफ औद्योगिक विवाद अधिनियम के प्राविधान भी वर्तमान मामले में आकर्षित नहीं होता है।

25. पक्षकारों के अभिवचनों, उसके समर्थन में उभयपक्ष द्वारा प्रस्तुत साक्ष्य तथा सम्बन्धित तथ्य एवं परिस्थितियों की उक्त व्याख्या व विश्लेषण एवं उक्त दृष्टान्त में दी गयी विधि व्यवस्था को दृष्टिगत रखते हुए मैं इस निष्कर्ष पर हूँ कि प्रार्थी पक्ष इस तथ्य को सिद्ध करने में असफल है कि सेवामुक्ति की कथित तिथि 01.02.2006 के ठीक पूर्व प्रार्थी ने केलेण्डर वर्ष में 240 दिन नियमित सेवा की है। विपक्षी की सेवा में नियमित नियुक्ति के तथ्य को भी प्रार्थी पक्ष सिद्ध करने में असफल है, तदनुसार एस.डी.ओ. (टेलिफोन) थानागंज, जनपद अलवर/प्रिंसपल जनरल मैनेजर, भारत संचार निगम लिमिटेड, जयपुर द्वारा दिनांक 01.02.2006 से प्रार्थी श्री जितेन्द्र कुमार दीक्षित की सेवा समाप्ति का आदेश विधिक व न्याय संगत है तथा प्रार्थी श्री जितेन्द्र कुमार दीक्षित याचित अनुतोष पाने के हकदार नहीं है। प्रार्थी की स्टेटमेंट ऑफ क्लेम खारिज होने योग्य है एवं तदनुसार खारिज की जाती है। न्यायनिर्णयन हेतु प्रेषित निर्देश का उत्तर उक्त प्रकार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

26. पंचाट की प्रतिलिपि केन्द्रीय सरकार को औद्योगिक विवाद अधिनियम 1947 की धारा 17 (1) के अन्तर्गत प्रकाशनार्थ प्रेषित की जाय।

भरत पाण्डेय , पीठासीन अधिकारी

नई दिल्ली, 3 मार्च, 2015

**का.आ. 468.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्रिस्टल इंटीग्रेटेड सर्विसेज प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, मुंबई के पंचाट (संदर्भ संख्या 51/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-11012/08/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 468.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 51/2012) of the Central Government Industrial Tribunal/Labour Court No. 1, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Krystal Integrated Services Private Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-11012/08/2012-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

**Present :** JUSTICE S.P.MEHROTRA, Presiding Officer

**REFERENCE NO. CGIT-1/51 OF 2012**

#### Parties:

Employers in relation to the management of  
Krystal Integrated Services Pvt. Ltd.

**And**

Their workmen

#### Appearances :

For the first party No.1 : Absent  
Management

For the second party/ : Mr. Tushar Rane,  
Union General Secretary

State : Maharashtra

Mumbai, dated the 16th day of January, 2015

#### AWARD

1. The present Reference has been made by the Central Government by its order dated 29.11.2012 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of Reference as per the Schedule to the said order are as under :

“Whether the demand of Maharashtra General Kamgar Mahasangh, Mumbai dated 20.1.2011 (as per Exb.I) against the management of M/s. Krystal Integrated Services Pvt. Ltd. Mumbai is legal and justified? What relief the concerned workmen are entitled to?”

2. Pursuant to the order dated 17.12.2012 passed by this Tribunal, notices were issued to the parties fixing 1.2.2013.

3. On 1.2.2013, Shri Arjun Jadav, President of the second party/Union was present. Statement of Claim on behalf of the second party/Union was filed. However, none was present for the first party/Management despite service of notice.

4. In the circumstances, by the order dated 1.2.2013, the case was adjourned for filing Written Statement on behalf of the first party/Management, and the next date fixed was 1.3.2013.

5. On 1.3.2013, none was present for the first party/Management. Shri Arjun Jadav, President of the second party/Union was present. As none was present on behalf of the first party/Management in spite of service of notice, this Tribunal by the order dated 1.3.2013, directed the matter to proceed ex parte against the first party/Management. Time was given to the second party/Union for filing affidavit, and 25.3.2013 was fixed in the matter.

6. On 25.3.2013, none was present on behalf of the first party/Management. Shri Arjun Jadav, President of the second party/Union was present. Prayer was made on behalf of the second party/Union for further time for filing affidavit. Thereupon, 2.5.2013 was fixed.

7. On 2.5.2013, and thereafter on various dates fixed in the matter, time was taken on behalf of the second party/Union for filing affidavit. However, no affidavit was filed on behalf of the second party/Union. Further, after 7.2.2014, none was appearing on behalf of the second party/Union on the dates fixed in the matter.

8. In the circumstances, the Tribunal by the order dated 29.9.2014 directed for issuance of fresh notice to the second party/Union. Accordingly, fresh notice was issued to the second party/Union by Registered Post AD fixing 18.11.2014. Notice so issued was duly served and Acknowledgement Card was received back.

9. On 18.11.2014, the Tribunal took note of the service of the said notice and the receipt of the Acknowledgement Card. On the said, date Shri Tushar Rane (wrongly transcribed as Kushal Rane in the order dated 18.11.2014) stating himself to the Secretary of the second party/Union was present on behalf of the second party/Union. He prayed for time for filing affidavit on behalf of the second party/Union. Time prayed for was granted, and 16.1.2015 was fixed.

10. Pursuant to the order dated 18.11.2014, the case is put up today. Shri Tushar Rane, Secretary of the second party/Union is present before the Tribunal. None is present for the first party/Management. Shri Tushar Rane has filed today an application on behalf of the second party/Union. It is, inter alia, stated in the said application that the workmen concerned in the present Reference have left the Company in question, namely, M/s.Krystal Integrated Services Private Limited (First party/Management), and in the circumstances, the demands forming the subject-matter of the Reference no longer survive.

11. Shri Tushar Rane who is present before the Tribunal has stated that all the concerned workmen in the present Reference have left the Company in question, namely M/s.Krystal Integrated Services Private Limited (First Party/Management) and, therefore, the demands as raised in the present Reference by the second party/Union no longer survive.

12. In view of the above, it is evident that the dispute forming the subject-matter of the Reference no longer survives.

13. Reference is therefore, answered by stating that the dispute forming the subject-matter of the Reference no longer survives.

14. Award is passed accordingly.

Justice S. P. MEHROTRA, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 469.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमिया मैग्नेसाइट कारपोरेशन के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 129/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[ सं. एल-27012/1/2014-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 469.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 129/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Dalmia Magnesite Corporation and their workman, which was received by the Central Government on 20/02/2015.

[No. L-27012/1/2014-IR(M)]

JOHAN TOPNO, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 19th January, 2015

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

#### Industrial Dispute No. 129/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Dalmia Magnesite Corporation and their workman)

#### BETWEEN:

Sri K. Palanisamy : 1st Party/Petitioner

#### AND

The Assistant General Manager : 2nd Party/Respondent  
M/s. Dalmia Magnesite  
Corporation (Prop: Dalmia Bharat  
Sugar and Industries Ltd.)  
Vellakkalpatti, Karuppur Post  
Salem-636012

#### Appearance :

For the 1st Party/ : None  
Petitioner

For the 2nd Party/ : M/s. R. Jayaprakash, Advocates  
Respondent

#### AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-27012/1/2014-IR (M) dated 05.12.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

“Whether the action of the Management of M/s. Dalmia Magnesite Corporation Ltd., Salem regarding dismissal of service of Sri K. Palanisamy w.e.f. 27.09.2011 is justifiable or not? If not, to what relief the workman is entitled?”

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 129/2014 and issued notices to both sides. The Respondent has appeared through the Counsel. The petitioner has received notice as early as on 03.01.2015, as seen from the Postal Acknowledgement Card. However, the petitioner has not entered appearance. He seems to be not interested in pursuing the matter. So the reference is only to be closed.

3. In view of the above the reference is closed. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1st Party/Petitioner : None  
 For the 2nd Party/Management : None

**Documents Marked:****On the petitioner's side**

Ex.No.	Date	Description
	N/A	

**On the Management's side**

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 3 मार्च, 2015

**का.आ. 470.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार हिंदुस्तान पेट्रोलियम कारपोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 7/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-30012/35/2007-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 470.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 7/2008) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Hindustan Petroleum Corporation Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-30012/35/2007-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR**

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 7/2008**

L-30012/35/2007-IR(M), dated 25.02.2008

Date of Passing Award – 9th Day of January, 2015

**Between:**

1. The Terminal Manager,  
HPCL, Paradip

2. M/s. Maa Mangala Construction,  
Bijayachandrapur,  
Plot No. 457, PO-Atharbanki,  
Paradip, Dist-Jagatsinghpur

...1st Party Management

**(And)**

The Organising Secretary,  
Petroleum Products Handling & Carriers  
Employees Union, Ex-Post Office Building,  
Nuabazar, Paradip Port,  
Dist-Jagatsinghpur, Odisha-754142

...2nd Party Workman

**Appearances :**

1. None	...	For the 1st Party- Management No. 1
2. None	...	For the 1st party- Management No. 2
3. Shri R. K. Swain	...	For the 2nd Party- Workmen

**AWARD**

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employer in relation to the Management of The Terminal Manager, HPCL, Paradip, Odisha, & M/s. Maa Mangala Construction, Paradip, Odisha and their workmen Shri Rabindra Kumar Swain in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act vide their Letter No. L-29011/23/1996- IR(M), dated 21.11.1996 to this Tribunal for adjudication. The dispute as referred to has been mentioned under the Schedule of the order of reference which is quoted below.

“Whether the action of the management of M/s. Maa Mangala Construction – contractor of HPCL in refusing the employment to Shri Rabindra Kumar Swain from 08.01.2007, is justified? If not, what relief the workman is entitled to?”

2. The 2nd party workman (herein after referred to as “the workman”) has espoused his claim through his union namely “Petroleum Product Handling & Carrier Employees Union”. Through his statement of claim the workman pleaded that he was working as the Hose Handling worker at the terminal point of HPCL, Paradip under the 1st Party Management No. 2, M/s Maa Mangala Construction (hereinafter referred to as “the management No. 2”). The management No. 2 is a contractor under the 1st Party Management No. 1, HPCL, Paradip, (hereinafter referred to as “the management No. 1”). The workman has alleged that the management No. 2 has terminated his services illegally with mala fide intention and paid him the retrenchment compensation through a cheque which he



(the workman) have not encashed as a measure of protest against the action of the management No. 2. The workman stated that he was fighting for the rights of the workers against the unfair labour practice of the management No. 2 and other irregularities. Keeping grudge upon the workman for his such type of acts, the management No. 2 with an ill intention initially suspended him and afterwards terminated his services. The workman has filed certain documents to establish his contentions with a prayer to declare his termination as illegal and unjustified and pass orders for his reinstatement with back wages and other consequential service benefits.

3. The management No. 1 in their written statement countered almost all the contentions of the workman and stated that they are not any way liable for the termination of employment of the workman by the management No. 2 (contractor). On the other hand, the management No. 2 contended that the disputant workman was a disturbing element in their establishment who is always indulged in disturbed activities leading to industrial unrest. He was warned for several times with the showcause notices, but he did not mend himself. Rather he involved himself more and more with some of his co-workers with the acts of misconduct. For such of his acts, the management No. 1 has made several complaints before the management No. 2 which forced the management No. 2 to suspend the services of the workman. Later on finding the workman not suitable for the establishment, the management No. 2 retrenched him with the payment of necessary retrenchment compensations. To establish their stand, the management No. 2 filed certain documents and made a prayer to dismiss the application of the workman as he is not entitle for any relief.

4. The following issues were framed by my predecessor.

(1) Whether the action of the management of M/s. Maa Mangala Construction – contractor of H.P.C.L. in refusing the employment to Shri Rabindra Kumar Swain from 08.01.2007 is justified?

(2) If not, what relief the workman is entitled to?

5. The workman has examined himself as the workman witness No. 1. He was cross examined in full. He proved certain documents which are marked as exhibit 1 to exhibit 21/1. The management No. 2 has also examined one witness as management witness No. 1 and proved certain documents marked as exhibit A to exhibit S.

### FINDINGS

#### Issue No. 1

6. The workman in his evidence has stated the he has no claim outstanding against the management No. 1. His claim lies only in respect of management No. 2. It is an

admitted fact that the management No. 2 initially suspended the workman for his misconducts prior to his disengagement. The management No. 2 has not issued any charge sheet and conducted any departmental enquiry against the workman. Once, the management No. 2 has also filed an FIR against the workman. Hence, the conduct of the management No. 2 shows that the workman was refused employment under them as a punishment measure imposed upon the workman. No other reason for such refusal of employment is noticed from the record. Since, it was not a case of termination of service of the workman otherwise than as a punishment, the question on payment of retrenchment compensation to the workman will not justify the action of the management No. 2. Moreover, the workman has not received the compensation paid to him by the management No. 2. The action of the management No. 2 neither satisfies Section 2(oo) nor Section 33 of the Industrial Disputes Act, 1947. Hence, the action of the management No. 2 in refusing employment to the workman is not legal and justified. Issue No. 1 is answered accordingly.

#### Issue No. 2

7. On the above findings, the management No. 2 (M/s. Maa Mangala Construction, Paradip) is here by ordered to reinstate the workman Shri Rabindra Kumar Swain in his previous post and pay him full salary with other allowances as applicable for the periods of his suspension. The management No. 2 is further ordered to pay 50% of his (the workman) monthly wages since the date of issue of his termination letter till the date of implementation of this award. The award is to be implemented by the management No. 2 within a period of 03 (three) months from the date of publication of award in the Gazette of India failing which the management shall pay interest @ 12% per annum simple interest.

8. The reference is answered accordingly in favour of the 2nd party workmen.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 471.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पुरनापानी लाइमस्टोन एवं डोलोमाइट क्वाररी/स्टील अथॉरिटी ऑफ इंडिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचात (संदर्भ संख्या 24/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-29011/23/1996-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

## AWARD

**S.O. 471.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 24/2001) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Purunapani Limestone and Dolomite Quarry/Steel Authority of India Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-29011/23/1996-IR(M)]

JOHAN TOPNO, Under Secy.

### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar.

#### **Tr. INDUSTRIAL DISPUTE CASE NO. 24/2001**

L-29011/23/1996-IR(M), dated 21.11.1996

Date of Passing Award – 9th Day of January, 2015

#### **Between:**

The Assistant General Manager,  
Purunapani Limestone & Dolomite Quarry,  
RMD, SAIL, PO\_Purunapani,  
Dist-Sundargarh, Odisha

...1st Party-Management

#### **(And)**

1. The Secretary,  
Rourkela Shramik Sangh,  
At/PO-Purnapani,  
Dist-Sundargarh, Odisha
2. The Secretary,  
Rourkela Mazdoor Sabha,  
At/PO-Purnapani,  
Dist-Sundargarh, Odisha
3. Shri Prasanna Kumar Dash & others,  
At-Baidyanathpur, PO-Hatibari,  
Dist-Sundargarh, Odisha

...2nd Party-Workman

#### **Appearances :**

1. Shri Advocate ... For the 1st Party-  
Management
2. None ... 2nd Party Union No. 1  
Rourkela Shramik Sangh
3. Shri Rourkela Mazdoor Sabha ... 2nd Party Union No. 2
4. Shri Prasanna Kumar Dash ... For the 2nd Party  
Workmen No. 3

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employer in relation to the Management of The Assistant General Manager, Purunapani Limestone & Dolomite Quarry, RMD, SAIL Rourkela, Odisha, and their workmen represented through different unions as well as a group of workers in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act vide their Letter No. L-29011/23/1996-IR(M), dated 21.11.1996 to this Tribunal for adjudication. The dispute as referred to has been mentioned under the schedule of the order of reference which is quoted below.

“Whether the demand of the union to pay equal pay to contract workers for similar and equal nature of jon and to regularize their services in line with the regular workmen of Purunapani Linestone & Dolomite Quarry of Raw Materials Division, SAIL is justified? If so, to what relief the workmen are entitled?”

2. During the process of adjudication, the 2nd party union No. 2 (in short “union No. 2”) (Rourkela Mazddor Sabha) and the group of workers represented through Shri Prasanna Kumar Dash (in short “other workmen”) were newly impleaded alongwith the contractors under whom the disputant workers were working. But, later on the newly impleaded contractors were pleaded to delete their names from the array of parties on the ground of closure of the Mines and termination of their contract. The grounds were considered and the names of the newly added parties (contractors) were deleted from the array of parties. The 2nd party union No. 1 (Rourkela Shramik Sangh) did not take any step in the proceedings and hence set exparte.

3. The 2nd party unions and other workmen have pleaded through their statement of claims that they were working under direct control of the management of RMD, SAIL and the so called contractors were sham and camouflage in order to keep the management of RMD, SAIL away from their liability towards the so called contract labourers. The workers were engaged in the mines to undertook the mines operation such as raising, sizing, transportation etc. of the limestones and dolomites which are required for the Rourkela Steel Plant. The workers remained unchanged with the change of contractors. The workers were also in receipt of all the statutory dues like leave, leave salary, gratuity, E.P.F., Bonus, medical facilities, etc. at par with the regular employees of the management of RMD, SAIL.

4. The management of RMD, SAIL have regularised the services of some of the contract labourers (co-workers) into their permanent capacity. But, the disputant workers were unfortunately not considered for permanent

absorption by the management of RMD, SAIL. The disputant workers have gathered sufficient experience for working in the prohibited site. The management of SAIL, RMD was also supervising the works of the disputant workers and the workers were also provided with necessary safety requirements to undertake the job in the prohibited site.

5. Later on with the closure of the mines and termination of contracts, the disputant workers have lost their jobs. Since the disputant workers were working under the direct control of the management of SAIL, RMD, they prayed for salary at par with the regular employees of the management and to regularize their services under the management of RMD, SAIL as the work under taken by them were of permanent and perennial in nature.

6. The management of RMD, SAIL on the other hand filed his written statements countering therewith all the statement of claims filed by the unions and the workmen. The management contended that the disputant workers were the contract labourers and the management had nothing to do with them except the contractors who were engaged to provide service to the management in consideration of money. The contractors were the real employers of the disputant workers and contractors are only liable for the payment of statutory benefits, etc. to the workers and to regulate the service conditions of the workers. The management has further contended that since the operation of the notification issued by the Government for abolition of contract labourers in the industry was stayed, the management found no infirmity in engaging contractors for the disposal of certain works in the industry. The management pleaded that the reference made by the Government being of general in nature due to non-specification of the names of the disputant workers, the same cannot be adjudicated by the Tribunal and hence the same should be rejected.

7. The following issues were settled by my predecessor.

- (1) Whether the reference is maintainable?
- (2) Whether the demand of the union to pay equal pay to the contract workers for similar and equal nature of job is justified?
- (3) Whether the demand of the union to regularize their services in line with the regular workmen of Purunapani Lime Stone and Dolomite Quarry of Raw Materials Division, SAIL, is justified?
- (4) To what relief the workmen are entitled?

8. From the side of the 2nd party workmen/union, three witnesses were examined and cross examined by the 1st party as workman witness No. 1, 2 and 3. Documents as proved by the 2nd party were marked from Ext. 1 to Ext. 11. From the side of the 1st party management, two witnesses

were examined and cross examined by the 2nd party as management witness No. 1 and 2. Documents as proved by the management were marked from Ext. A to Ext. G. Parties have filed their written notes of submissions. I have also heard the oral submissions made by the parties and perused the record.

## FINDINGS

### Issue No. 1

9. Admittedly, the establishment of the management is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 (herein after referred to as "the Act") and the dispute on demand for equal pay for equal work and regularization of services raised by the 2nd party workman is an industrial dispute within the meaning of Section 2(k) of the Act. The 2nd party workmen are also the workmen under the 1st party management within the meaning of Section 2(s) of the Act. Upon aggrieved with the non compliance of the demand of the 2nd party the workmen/2nd party raised the dispute before the Assistant Labour Commissioner (Central), Rourkela for an amicable settlement of the matter. Since no settlement could be arrived at, the Assistant Labour Commissioner (Central, Rourkela referred the matter to the Ministry of Labour & Employment, Government of India, New Delhi being the appropriate Government for consideration and hence this reference. Hence, on the above counts, it is a established fact that the reference is maintainable. Issue No. 1 is answered accordingly.

### Issue No. 2

10. It is an admitted fact that the 1st party management has provided all the statutory requirements like safety materials, necessary trainings, medical facilities etc., to the contract workers. The industry in which the workers were working is a hazardous industry and to work in that industry definitely needs grater courage and tremendous will power to undertake the work. The 1st party management was paying salary, perquisites to its regular employees as per the recommendations of the NJCC. Since the 1st party management was receiving the services of the disputant workers directly to run the industry, the management should have considered the plight of the so called contract workers to pay them their wages at par with the regular employees of the industry irrespective of the mode of recruitment of the concerned workmen. The disputant workmen have put in hard work to satisfy the wants of the 1st party management. They have also worked under the direct control and supervision of the 1st party management through name sake contractors for a much longer period as their services were immensely required by the management. Therefore, the 1st party management is not justified in not paying equal pay for equal work, which can be said otherwise as not paying wages to the workers at par with the regular employees of the industry. Hence, issue No. 2 is answered accordingly.

**Issue No. 3**

11. It is an admitted fact that the disputant contract workers were working in the industry of the 1st party management against the permanent and perennial nature of jobs without any break and that too for a much longer period. The services of the disputant contract workers were immensely necessary for the 1st party management. The 1st party management had provided to the disputant workers with all the statutory requirements as required in that industry such as adequate safety measures, necessary trainings, adequate medical facilities, maintenance of provident fund accounts and providing loans from that P.F. accounts, etc, at par with the regular employees of that industry. The disputant workers were working under the direct control of the 1st party management. The arrangements for engagement of contractors by the 1st party management was only to safeguard the unjustified interest of the 1st party management to exploit the services of the disputant workmen by giving them much lesser benefits as compared to the regular employees of the management.

12. The disputant workers were regularly working under the 1st party management irrespective of the fact that the contract for work and the contractors were changing time and again. When the appropriate Government is notified for the abolition of the contract labour system in the industry, the 1st party management should consider for the regular engagement of the contract workers without terminating the services of the disputant workers on the plea of closure of the industry and waiving of contract labour system as the management needs services of the workers to run the industry to achieve the very purpose of the establishment of the industry. The management has already absorbed some of the so called contract workers (co-workers of the disputant workmen) into their permanent capacity. Also, in the last line of the last but one para of the written notes of arguments submitted on behalf of the 1st party management, it is clearly admitted by the 1st party management that “the 2nd party workmen are entitled to the relief of regularization as claimed”. Thus, the demand of the union to regularize their services in line with the regular workmen of Purunapani Lime Stone & Dolomite Quarry of the Raw Materials Division, SAIL is justified. Issue No. 3 is answered accordingly.

13. The object and scope of the Contract Labour (Regulation and Abolition) Act, 1970 (in short “CLRA Act”) is to improve the system of employment of contract labour in order to avoid various abuses and to ensure payment of wages & provision of essential amenities to the so called contract labourers. The basic purpose of the CLRA Act is to undertake the Industrial works through regular employees who avails all the extendable benefits as admissible directly from the management. Therefore, when the appropriate Government is abolishing the contract labour system, the principal employer/management should

absorb the contract labourers into their permanent capacity to undertake those industrial works.

**Issue No. 4**

14. The management is therefore, ordered to reinstate the disputant workers by absorbing them into the regular workforce working under them in a measure to regularize their services with effect from the date of publication of the award in the Gazette of India. The management is further ordered to pay the differential wages at par with the regular employees of their industry in lieu of arrear pay and allowances for the periods the disputant workers have worked in their establishment/industry within three months from the date of publication of award in the Gazette of India, failing which the management shall pay interest @ 12% per annum simple interest

15. The reference is answered accordingly in favour of the 2nd party workmen.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 472.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रदीप माइनिंग एवं कंस्ट्रक्शन प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 15/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-29012/49/2012-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 472.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 15/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pradeep Mining and Construction Private Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-29012/49/2012-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR**

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 15/2013**

No. L-29012/49/2012-IR(M) dated 06.02.2013



Date of Passing Award – 19th Day of January, 2015

नई दिल्ली, 3 मार्च, 2015

**Between :**

M/s. Pradeep Mining & Construction (P) Ltd.,  
Chorda Road, Jajpur,  
Odisha ...1st Party Management

**(And)**

Shri Dhaneswar Lohar,  
Village-Arodapal, PO-Chungudipal,  
Thana-Kaliapani, Dist-Jajpur,  
Odisha ...2nd Party Workman

**Appearances :**

None ... For the 1st Party-Management

None ... For the 2nd Party-Workman

**AWARD**

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Pradeep Mining & Construction (P) Ltd., Jajpur, Odisha and their workman Shri Dhaneswar Lohar, in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/49/2012-IR(M), dated 06.02.2013 to this Tribunal for adjudication.

2. The reference was registered on 28.02.2013. The 2nd party workman has not complied the orders of the Ministry for filing his statement of claim within the prescribed period. He also neither appeared nor took any step even after notice through ordinary post issued to him on 04.08.2014 and again through registered post on 19.09.2014. On 18.7.2013, he appeared before the Tribunal and filed a petition to adjourn the matter on the ground of amendment of the schedule of reference. Since that date, the workman neither appeared nor has taken any step in the matter. Since the 2nd party workman did not file his statement of claim, there is no scope for the 1st party management to file their written statements. Moreover, it is not possible to adjudicate the matter in the absence of any pleadings of the parties.

3. It appears from the above acts of the 2nd party workman that either they have lost their interest in the case or they might have resolved his disputes with the 1st party management amicably out of the court. In the given circumstances, only a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

4. The reference is answered in the above terms.

PRADEEP KUMAR, Presiding Officer

**का.आ. 473.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार नागार्जुन कंस्ट्रक्शन कंपनी लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 14/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[ सं. एल-30012/72/2013-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 473.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 14/2014) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Nagarjuna Construction Company Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-30012/72/2013-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

**INDUSTRIAL DISPUTE CASE NO. 14/2014**

No. L-30012/72/2013-IR(M) dated 04.04.2014

Date of Passing Award – 9th Day of January, 2015

**Between :**

1. Nagarjuna Construction Co. Ltd.,  
EPCM-4, IOCL Reginary Site,  
At-Abhaya Chandpur, PO-Jhimani,  
Via-Paradip, Dist-Jagatsinghpur,  
Odisha ...1st Party Management

2. Shri Banka Bihari Singh,  
Sub-contractor,  
S/o Gobardhan Singh,  
At-Biswali, PO-Jhimani, Via-Paradip,  
Dist-Jagatsinghpur, Odisha

**(And)**

Shri Nalini Kanta Bhoi,  
S/o Late Braja Bandhu Bhoi,  
At/PO-Karanja, Via-Mahakalpara  
PS-Marsaghai, Dist-Kendrapara,  
Odisha ...2nd Party Workman

**Appearances :**

None ... For the 1st Party-Management

None ... For the 2nd Party-Workman

**AWARD**

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of Nagarjuna Construction Co. Ltd., & Shri Banka Bihari Singh and their workman Shri Nalini Kanta Bhoi, in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-30012/72/2013-IR(M), dated 04.04.2014 to this Tribunal for adjudication.

2. The reference was registered on 26.05.2014. The 2nd party workman has not complied the orders of the Ministry for filing his statement of claim within the prescribed period. He also neither appeared nor took any step even after notice through ordinary post issued to him on 06.08.2014 and again through registered post on 05.09.2014. Since the 2nd party workman did not file his statement of claim, there is no scope for the 1st party management Nos. 1 & 2 to file their written statements. Moreover, it is not possible to adjudicate the matter in the absence of any pleadings of the parties.

3. It appears from the above acts of the 2nd party union that either they have lost their interest in the case or they might have resolved their disputes with the 1st party management amicably out of the court. In the given circumstances, only a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

4. The reference is answered in the above terms.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 474.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ट्रिनिटी कर्मशियल्स प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 60/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-29012/28/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 474.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 60/

2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Trinity Commercial Private Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-29012/28/2013-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR**

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

**Tr. INDUSTRIAL DISPUTE CASE NO. 60/2013**

No. L-29012/28/2013-IR(M) dated 23.08.2013

Date of Passing Award – 9th Day of January, 2015

**Between :**

M/s. Trinity Commercials Pvt. Ltd.,  
Contractor of M/s. Serajuddin Co.  
Balda Block Iron Mines, At/PO-Baneikela,  
Via-Joda, Dist-Keonjhar, Odisha

...1st Party Management

**(And)**

Shri Dinamani Naik,  
At/PO-Balada, Via-Joda,  
Dist-Keonjhar, Odisha

...2nd Party Workman

**Appearances :**

None ... For the 1st Party-Management

None ... For the 2nd Party-Workman

**AWARD**

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Trinity Commercials Pvt. Ltd., and their workman Shri Dinamani Naik in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/28/2013-IR(M), dated 23.08.2013 to this Tribunal for adjudication.

2. The 2nd party workman has filed his statement of claim through post which was received on 22.10.2013. He has not filed any documents to substantiate his case. Since, he did not take any step except sending his statement of claim through post he was noticed through registered post on 27.10.2014. Notice issued to him seems to have been duly served. But, the 2nd party workman did not appear.

3. On the other hand, the 1st party management did not file it's written statement, though the 2nd party workman has served a copy of statement of claim on them through post. Also, notice through registered post issued to the 1st party to file it's written statement. But, neither the 1st party appeared nor any step taken by it.

4. It appears from the above acts of the parties that either they have lost their interest in the case or they might have resolved their disputes amicably out of the court. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

5. The reference is answered in the above terms.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 475.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स अरुण कंस्ट्रक्शन/मैसर्स जी. एस. अटवाल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 48/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-29012/15/2011-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 475.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 48/2012) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Arun Construction/ M/s. G.S. Atwal and their workman, which was received by the Central Government on 20/02/2015.

[No. L-29012/15/2011-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, BHUBANESWAR

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

#### INDUSTRIAL DISPUTE CASE NO. 48/2012

No. L-29012/15/2011-IR(M) dated 13.04.2012

Date of Passing Award – 9th Day of January, 2015

#### Between :

1. M/s. Arun Construction,  
Sub-contractor of M/s. G.S. Atwal,  
At-Kanchipur, PO-Jajpur Road,  
Dist-Jajpur-755019, (Odisha)

...1st Party-Management

2. M/s. G.S. Atwal,  
Contactor of Sukinda Chromite Mines,  
At/PO-Kalarangiatta,  
PO-Kaliapani, Jajpur

#### (And)

Their Workman Shri Jayaram Mahanta,  
C/o Sanatan Mahanta,  
At-Rankia (Udayapur), PO-Lenboo,  
PS-Sukinda, Dist-Jajpur,  
Odisha

...2nd Party-Workman

#### Appearances :

None ... For the 1st Party-Management

None ... For the 2nd Party-Workman

#### AWARD

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Arun Construction & M/s. G.S. Atwal and their workman Shri Jayaram Mahanta in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/15/2011-IR(M), dated 13.04.2012 to this Tribunal for adjudication.

2. The 2nd party workman has filed his statement of claim through his advocate which is not permissible under the law. He was noticed through ordinary post to appear before the Tribunal, but he did not turn up. He was again noticed on 31.05.2013, 05.09.2014 through ordinary post. Finally, he was noticed on 31.10.2014 through registered post. All the notices issued to him seem to have been duly served. But, the 2nd party workman did not file his statement of claim. Though the 1st party management Nos. 1 & 2 were appearing on some dates, they failed to appear before this Tribunal since September 2014. It is therefore, presumed that either the parties to the dispute have no interest in the case or they might have resolved their disputes amicably out of the court. In the absence of the claim statement and appearance of the parties, the matter cannot be adjudicated.

3. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

4. The reference is answered in the above terms.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**AWARD**

**का.आ. 476.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ट्रिनिटी कर्मसियल्स प्राइवेट लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 61/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-29012/29/2013-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 476.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 61/2013) of the Central Government Industrial Tribunal/Labour Court, Bhubaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Trinity Commercial Private Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-29012/29/2013-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-  
CUM-LABOUR COURT, BHUBANESWAR**

**Present** : Shri Pradeep Kumar, Presiding Officer,  
C.G.I.T.-cum-Labour Court, Bhubaneswar

**INDUSTRIAL DISPUTE CASE NO. 61/2013**

No. L-29012/29/2013-IR(M) dated 23.08.2013

Date of Passing Award – 9th Day of January, 2015

**Between :**

M/s. Trinity Commercials Pvt. Ltd.,  
Contractor of M/s. Serajuddin Co.  
Balda Block Iron Mines, At/PO-Baneikela,  
Via-Joda, Dist-Keonjhar, Odisha

...1st Party Management

**(And)**

Shri Ghanashyam Hembram,  
At/PO-Balada, Via-Joda,  
Dist-Keonjhar, Odisha

...2nd Party Workman

**Appearances :**

None	...	For the 1st Party-Management
None	...	For the 2nd Party-Workman

The Government of India in the Ministry of Labour & Employment has referred the present dispute existing between the employers in relation to the Management of M/s. Trinity Commercials Pvt. Ltd., and their workman Shri Ghanashyam Hembram in exercise of the powers conferred under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) vide their Letter No. L-29012/28/2013-IR(M), dated 23.08.2013 to this Tribunal for adjudication.

2. The 2nd party workman has filed his statement of claim through post which was received on 22.10.2013. He has not filed any documents to substantiate his case. Since, he did not take any step except sending his statement of claim through post, he was noticed through registered post on 27.10.2014. Notice issued to him seems to have been duly served. But, the 2nd party workman did not appear.

3. On the other hand, the 1st party management did not file its written statement, though the 2nd party workman has served a copy of statement of claim on the them through post. Also, notice through registered post issued to the 1st party to file its written statement. But, neither the 1st party appeared nor any step taken by it.

4. It appears from the above acts of the parties that either they have lost their interest in the case or they might have resolved their disputes amicably out of the Court. In the given circumstances, a no-dispute award is required to be passed and accordingly a no-dispute award is passed in the case.

5. The reference is answered in the above terms.

PRADEEP KUMAR, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 477.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भिलाई स्टील प्लांट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 62/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-43011/2/2007-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 477.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 62/2007) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the



Industrial Dispute between the employers in relation to the management of Bhilai Steel Plant and their workman, which was received by the Central Government on 20/02/2015.

[No. L-43011/2/2007-IR(M)]

JOHAN TOPNO, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/62/07

The President,  
Metal Mines Workers Union,  
Rajhara Branch, Dalli Rajhara,  
Dt. Durg (Chhattisgarh)

...Workman/Union

#### Versus

General Manager,  
Bhilai Steel Plant,  
Bhilai, Distt. Durg

...Management

#### AWARD

Passed on this 19th day of January, 2015

1. As per letter dated 18-7-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-43011/2/2007-IR(M). The dispute under reference relates to:

“Whether the action of the management of Bhilai Steel Plant in promoting/ recruiting Shri R.K.Garg, Shri H.N.Hari Viashi, Shri D.K. Tamteka, Shri Rajiv Devdena and Shri Devanand Rasthogi from non-executive (P-8), Mines Foreman post to Jr. Executive (E-O) post is legal and just? If not, too what relief the Senior (P-8) Mines Foreman workmen who have been affected by above appointments are entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman failed to participate in reference proceeding. He is proceeded ex-parte on 9-5-2012. IInd party management submits that during visit to Jharandali Mines, Director of Mines and Safety appointed violation of Section 35 of Mines Regulation 1961. That adequate number of Asstt. Manager having statutory qualifications have to be posted to look after the operation of mines was not followed. According to recruitment policy of company, the executive posts of E-4 Grade were to be circulated internally within the Plant/ unit concerned. If suitable candidates was not available, same was to be circulated on interplant basis. The internal circular was issued for notifying application for Bhilai Steel Plant on 2-5-05. The minimum qualifications were diploma in mining engineering, IInd class Mines master circulated in

competency. In accordance with circular, minimum 3 years experience was required in IInd class Mines Manager. After completion of selection process, the recruitment section has released a panel for issuance of offer of appointment to the 5 non-executive employees of the mines for the post of Junior Executive Mining (E-O) namely Devanand Rastogi, Rajeev Dandona, D.K.Ramteke, H.S.Haribyasi and Rajendra Kumar Garg after recommendation by DPC. The Union raised dispute as per letter dated 18-6-05 before RLC, Raipur. The schedule related to promotion was incorrect. IInd party submits that management promoting R.K.Garg, H.N.Hari Viashi, D.K.Ramteke, Rajiv Devdena and Devnand Rastogi is legal.

3. Management filed affidavit of evidence of witness Shri R.K.Shrivastava supporting contentions in Written Statement. Ist party has not participated in reference. Management's witness was not cross-examined. I find no reason to disbelieve in challenged evidence of management's witness.

4. In the result, award is passed as under:-

- (1) For failure of Ist party in participating in reference proceeding, the action of management is proper and legal, the action of management is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 478.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूरेनियम कारपोरेशन ऑफ इंडिया लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 18/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[ सं. एल-43011/5/2010-आईआर (एम) ]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 478.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 18/2011) of the Central Government Industrial Tribunal/ Labour Court No. 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Uranium Corporation of India Limited and their workman, which was received by the Central Government on 20/02/2015.

[No. L-43011/5/2010-IR(M)]

JOHAN TOPNO, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT  
INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD****PRESENT :** Shri Kishori Ram, Presiding OfficerIn the matter of an Industrial Dispute under Section  
10(1)(d) of the I.D. Act., 1947.**REFERENCE NO. 18 OF 2011****PARTIES :** General Secretary,  
M/s Uranium Kamgar Union,  
PO: Jadugoda, Distt. Singhbhum East**Vs.**The General Manager,  
Uranium Corporation of India Ltd.,  
PO: Jadugoda Mines,  
Distt. Singhbhum EastOrder No. L-43011/5/2010-IR (M)  
dt. 4.7.2011.**APPEARANCES :**On behalf of the : Mr. S.N. Goswami, Ld. Advocate  
Workman/UnionOn behalf of the : Mr. P. R. Rakshit, Ld. Advocate  
Management

State : Jharkhand Industry : Mines

Dated, Dhanbad, the 21st Jan., 2015

**AWARD**

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-43011/5/2010-IR (M) dt. 4.7.2011.

**SCHEDULE**

“Whether the action of the Management of Uranium Corporation of India Ltd, in dismissing the service of Smt. Thanushree Nayak w.e.f. 10.11.2009 is just and fair? To what relief the concerned applicant is entitled?”

On receipt of the Order No. L-43011/5/2010-IR- (M) dt. 04.07.2011 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 18 of 2011 was registered on 27.07.2011 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld. Counsels appeared in, and contested the case.

2. The case of workwoman Smt. Tanushree Nayak as sponsored by the Uranium Kamgar Union, Jaduguda Mines, Distt. Singhbhum (E) is that she has been unblemishedly working as the permanent Scientific Assistant ‘A’ since long. At silently but steadily continuous protest to some corrupt at higher level, the Higher Officials were annoyed and prejudiced against her, always on the lookout for her removal from services. Sri P.K. Tamrakar, Assistant Supdt, (CR & D), the actual guilty person, motivatedly issued her a show-cause notice dt. 28.4.2008. She was coerced to admit the allegation by giving her statement to that effect. After the forceful and illegal confessional statement dt. 29.5.2008 from her, the Management issued her a false and frivolous charge sheet dt. 8.5.2008. The workwoman submitted her reply dt. 19.5.2008, with emphatic denial to the charges levelled against her, by submitting about the writing of the letters dt. 28.4.2008 and 2.5.2008 under duress, coercion and undue influence of aforesaid Assistant Superintendent (CR & D). Despite it, she was suspended as per the Order dt. 2.5.2008. The Management also appointed a biased Enquiry Officer for an invalid and irregular enquiry. She by the letter dt. 2.8.2008 had requested the Enquiry Officer for supply of certain information and clarification. She had also submitted her representation dt. 15.7.2008. She had also raised the voice of objection as per the letter dt. 29.9.2008 against the illegal manner/method of the enquiry as well as the specific biasness of the Enquiry Officer, who mala fide and biasedly allowed neither her nor her representative to cross-examine the Management’s witnesses, rather it was obstructed to cross-examine on some plea or other. The Management miserably failed to adduce any documents to prove the alleged manipulation of the reported result 60 to 65 % of the burnt lime sample and alleged reporting of higher value in place of actual result analyzed by the Laboratory Technician. Even the allegations of extending financial benefit to the Supplier/Vendors of burnt lime of M/s Shri Shyam Chemical as well as the allegation of alleged financial loss of UCIL could not be proved just as the charges levelled against the workwoman. The finding of the Enquiry Officer not based on evidence was perverse. The Chief Manager (Admn.) I.R.S., P.K. Mohanty had no power to issue the charge sheet nor to dismiss her, so the dismissal order dt. 10.11.2009 is prima facie illegal and void ab initio. Even the appeal of the workwoman was unreasonably and inconspicuously dismissed by the Chairman and Managing Director. The workwoman as well as the Union had represented before the Management against the illegal and arbitrary order of dismissal, but till the date ineffective.

Finally, the Industrial Dispute raised by the Union before the A.L.C. (C), Chaibasa, due to the failure of conciliation for adamantancy of the Management in attitude resulted in the reference for an adjudication. So the action of the Management in dismissing the workwoman is not only vindictive and anti labour policy but also illegal, unjustified and against the principles of natural justice. It is also too harsh and disproportionate to the alleged offence.

3. The Union concerned in its rejoinder has specifically denied all the allegations of the OP/Management as false, concocted and frivolous, further stating that on the basis of analysis report, the finance department made payment to the supplier of Burnt Lime, and the workwoman was no way connected with the order received of material and payment. She was innocent. She never got any illegal gain out of the alleged payment to the Supplier for supply of Burnt Lime, rather the higher officials are deeply involved in it, and they made her a scape-goat. The alleged report was not prepared by her nor there any alleged manipulation of the result. The non-supply of the enquiry proceeding along with the second Show-Cause to her prejudiced her a lot. So she is entitled to reinstatement with full back wages.

4. Whereas challenging the maintainability of the reference in law and on facts etc. as stated in their written statement, the OP/Management has alleged that the Industrial dispute (herein after referred to as I.D.) as scheduled to the reference as referred mechanically by the Government is no I.D. u/s 2(k) of the I.D. Act, 1947, so the Tribunal has no jurisdiction for an adjudication. The Uranium Kamgar Union devoid of any representative capacity has no locus standi to raise it, as workwoman Thanushree Nayak is not a member of it, and the Union is not a recognized one of the O.P./Management. Moreover, raising of the demand by the workman for any matter/ dispute firstly with the Management/Employer, and its refusal by the management are the since quo non for the reference. The reference devoid of it is not valid for an adjudication. Smt. Tanushree Nayak, the Scientific Assistant Gr. I, was working in Fiduciary position of the Government Company. She has unequivocally accepted the fraud so committed by her for more than once. The Management could have summarily dismissed her, but the Management gave her full opportunity for her defence and for the end of justice so she was issued the charge sheet and the Enquiry Committee was constituted wherein both the parties have examined and cross-examined the witnesses. On the basis of the consideration of all the relevant documents including the Enquiry Report, the Disciplinary Authority dismissed her legally. She was initially employed as Graded Operational Trainee in the Laboratory of Jaduguda Mines, Jaduguda, wherein she was absorbed as the Scientific Assistant Gr. A w.e.f. 08.06.2001. Her normal duty interalia was to test, to analyse the various samples to prepare analysis report under her signature, and to submit it to the Section- In-charge of the

Department. As the fact of the case stands CaO contents of the samples analysis was done by the Laboratory Assistants and its report was sent to Smt. Nayak for checking report and the calculation of actual findings about the samples of Brunt lime having CaO contents as reported by the Laboratory Assistant, as the Corporation needs the huge quantity of Brunt lime for various requirement at Jaudguda Mines. Brunt Lime is procured through the suppliers on purchase orders specifying the required level of available CaO contents in the material to be supplied by the supplier. The payment based on the analysis report at the terms & conditions is made to the supplier by the Corporation. The workwoman being the Sr. most Scientific Assistant Grade A was entrusted with the job of checking and preparing the reports of actual findings for CaO contents in the brunt samples taken from the supplied brunt Lime. Accordingly, she checked and reported the actual findings of thereof. But on final verification of the analysis report by the officials concerned, it was found that Smt. Nayak had manipulated the results of about 60 to 65% samples of brunt Limes during the period dt. 03.12. 2007 to 18.04.2008; as such she falsely reported of higher value by tampering with the actual result figures of the Analysis done by the Laboratory Assistants. Thus she had wilfully and mala fide extended financial benefits to the supplier to M/s Shri Shyam Chemical with a view to have her own gain causing a huge financial loss to the Corporation. On the complaint of the Officer concerned, she was show- caused as per the order dt. 28.04.2008 for it. She also submitted her replies dt. 28.04.2008 and 02.05.2008 already accepting her misdeeds for the wrongful gains of the suppliers and she also begged mercy for her such grave misconducts. She was suspended as per the order dt. 2.5.2008 of the Management in view of her grave and fraudulent misconducts as accepted by herself. She was issued the charge sheet dt. 8.5.2008 for it. After some more time, she submitted her written reply on 19.5.2008. Since the explanation of workwoman was found unsatisfactory by the Competent Authority, and the Enquiry Committee was constituted as per the order dt. 21.5.2008 of the Management whereby the Enquiry Officer and the Presenting Officer for the Management were appointed for the enquiry against her in respect of the charges levelled against her. She was given all reasonable opportunities for her own defence in course of the enquiry from 26.05.2008 to 12.06.2009. The domestic Enquiry was fairly and properly held in accordance with the principle of natural justice as also certified by the workwoman and her co-worker as well. The Enquiry Officer submitted enquiry report to the Authority concerned as per his letter dt. 27.07.2009, holding her the guilty of the charges. At the 2nd Show-Cause Notice dt. 7.09.2009 with a copy of Enquiry Report, she submitted her reply. On the due consideration of all the facts, the Authority concerned as per order dt. 10.11.2009 dismissed her from the service. As such the action of the

Management in dismissing the workwoman is just and fair, so she is not entitled to reinstatement or any relief.

It has been further submitted for adducing evidence to prove the charge levelled against the workwoman on merits, if the domestic enquiry held by the Management is found unfair at the preliminary issue.

The OP/Management in their rejoinder has categorically denied all the allegations of the workwoman as false.

### FINDING WITH REASONINGS

5. In the instant reference, it is quite obvious from the case record that after taking the evidences of WWI Smt. Tanushree Nayak and MWI B.B Shaw, the Manager (Pers.) of the Management at the preliminary point, while it was pending for hearing the arguments of both the parties at the preliminary point, a petition Mr. S.N. Goswami, Ld. Advocate for the Union Representative/workwoman appears to have been filed for not contesting the fairness of the enquiry, serving a copy of it on Mr. P.R. Rakshit, Ld. Advocate for the Management. Accordingly, the Tribunal as per order No.22 dt.06.03.2014 held the domestic enquiry as fair and proper in accordance with principle of natural justice in view of the aforesaid circumstances. Hence, it resulted in hearing the arguments of both the parties on merits.

Mr. P.R. Rakshit, the Learned Counsel for the OP/Management has argued that after holding the domestic enquiry, the Enquiry Officer submitted his enquiry report (Ext M.17), holding the delinquent employee Smt. Thaunshree Nayak guilty of the charges proved; on the second Show-Cause Notice and her reply to it (Extt.M.16 and M.18 respectively), the Disciplinary Authority duly considered all the materials, and awarded her the punishment of dismissal for her proved misconduct. Even on acceptance of the enquiry as fair by the delinquent employee as per her petition dt.6.3.2014 and the same was upheld by the Tribunal. To Mr. Rakshit, thus the point of interference by the Tribunal under Sec.11A of the Industrial Dispute Act, 1947 is only now for due consideration on its merits. The delinquent employee, the Scientific Assistant Grade "A" was working in fiduciary position needing high integrity, but she manipulated the figures of the analysis reports by raising the Cao contents in the Burnt Lime supplied by one supplier M/s Shyam Chemical for the period from 3.12.2007 to 18.04.2008 with a view to facilitate illegal increased financial benefits to the supplier, as she fairly accepted her in her statements (Two letters - Extt.M.5 & 5/1). In support of his argument, Mr. Rakshit, the Learned Counsel for the OP/Management has, relying upon the rutities noted below, submitted that 'role of the Court in the matter departmental proceeding is very limited, and that court can not substitute its own view or finding for finding recorded by the Disciplinary Authority on detailed appreciation of the evidence on record). In the matter of

imposition of sentence, the scope of interference by the Court is very limited and restricted to exception cases. The punishment imposed by the Disciplinary Authority or the appellate Authority unless shocking to the conscience of the Court, cannot be subjected to judicial review. The Court has to record the reasons as to why the punishment is disproportionate; mere statement that the punishment is disproportionate would not suffice (Para 22), 2013 LAB IC.2810 S.C. (DB) (A), S.R. Tewari vs. Union of India. Similar view of the Hon'ble Apex Court was held in the case of Regional Manager, UP, SRTC Vs. Hari Lal, 2003 SCC (L & S) 363 (DB) as cited by Mr. Rakshit, wherein further holding that it is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstance which go into the decision making process while considering whether the punishment is proportionate or disproportionate... where the person deals with public money is engaged in financial transaction or acts in a fiduciary capacity, the highest degree of integrity and trust worthiness is a must and unexceptional (Para 10).

Further submission of Mr. Rakshit is that where there is sufficiency of Evidence and Correctness of conclusion drawn in departmental enquiry, it is not for the court to examine these facts, though it may be possible to arrive at a different conclusion as held in the case of High Court of Judicature at Bombay Vs. Shirish Kumar Rangrao Patil, 1997 SCC (L&S) 1486 (DB).

Lastly Mr. Rakshit has submitted, relying upon AIR 2000 SC 3129 (DB) wherein held, in reference to Industrial Dispute Act, 1947, Sec. 2 Item, Sec. 11 A, that where charges of breach of trust and misappropriation of goods are established, reinstating the employee in service unjustified, and facts that misappropriation is for small or large amounts or the past record of employee is unblemished are irrelevant (Para 6, 7, 8).

6. Whereas the contention of Mr. S.N. Goswami, Ld. Counsel for the delinquent employee is that she was the permanent employee of M/s UCIL, Jaduguoda Mines where she had been working as the Scientific Asstt.- A since 1997 with full honesty and integrity as per Service Records. She was being pressurized to perform the job assigned as per the instructions given by Mr. P.K. Tamrakar, the Asstt. Supdt, (CR & D) of the Company. On the protest of the delinquent employee, the High Officials got annoyed and prejudiced towards her. For the reasons, aforesaid Asstt. Supdt. (CR & D) issued her a Show-Cause dt. 28.04.2008 with a view to save his own skin and put the false allegation against her. She never committed any misconduct as levelled against her. She also replied to the charge sheet on 19.05.2008, emphatically denying the allegations beyond the jurisdiction under clause 2c(d) of the Certified Standing Order of the Company. In course of enquiry, the innocent employee had fully protested the allegations of false reporting through manipulation of result



of Burnt Lime in the Analysis Report of the Laboratory Assistant under his instructions. Her alleged letters of her acceptance of her guilt was written by her under the duress of the Asstt. Supdt. Moreover, despite the alleged misconducts having been unestablished, the Enquiry Officer biasedly and perversely submitted his report against her, because the very charge sheet is itself vague, invalid and beyond jurisdiction. Finally, it is alleged that the action of the Management in dismissing the delinquent employee from the service is illegal, arbitrary and forceful and against the principle of natural justice which is too harsh and shockingly disproportionate. Therefore she is legally entitled for reinstatement in the service with full back wages and other consequential benefits.

7. On the perusal and consideration of the materials available on the case records, after hearing the detailed argument of both the Learned Counsels for the respective parties, the indisputable facts visible to the serve eyes appears to be as such:

- (i) Smt. Tanushree Nayak the delinquent employee a Graduate was initially appointed as G.O.T. on 08.12.1997 in the CRD of the UCIL, had been working as the Scientific Assistant A since 08.06.2001 after her absorption. Though She was not designated as the Supervisor, the Scientific Asstt., Grade C, she as the Senior Scientific Asstt. was assigned to the job of the Supervisor in place of the Shunbhakar Sahu since transferred, for working as the Analyst and Supervisor for the last one years (from 20.08.2007 to 14.07.2008) as per the oral instruction of Dr.P.K.Tamrakar, the Asstt. Supdt., (CR & D). She was accordingly to perform the job of checking calculation of samples of burnt Lime done by the Lab Assistants, preparing reports of the actual findings under her certificate and signature, and to submit the same to the Department Head. In both the conditions of analysis and reporting work, the delinquent employee used to produce the result of Analysis before the Asstt. Supdt. (C.R.D.), the Section Divisional Head, before whom the Registers of calculation were produced to check the calculation of the Actual Result so as to check, i.e., analyze the samples for accurate correct finding of Actual Analysis Result. There was as usual a possibility for the Senior Assistant Supdt. as the Final Authority to check its accuracy in the Analysis Report of the delinquent employee in case of any wrong.
- (ii) Acid leaching method is applied to processing of the Uranium Ore in the Company. It daily results in generation of acidic slurry (tailing) in larger quantity. The tailings before their disposal to the Tailings Ponds are neutralized by maintaining the

pH through the use of the burnt lime (containing the desired level of Cao.) supplied by the Supplier concerned to the Company as per the purchase order based on its terms and conditions, and the payment by the Company to its Supplier is based only on the desired level of Cao existent in his supplied Burnt Lime.

8. In addition to it, from the perusal of the materials in the case record, it prima facie, manifests that so far as the acceptance /confession of the delinquent employee is concerned, none of her two separate letters (Extt.M.5 & 5/1= ME-8 and 9 respectively) after Show-Cause Notice dt.28.05.2008 but prior to the charge sheet appears to be free from coercion and undue influence of the Asstt. Superintendent, as the expressions of the letters are palpably vague and unnatural.

The description of charges Annexure to the charge sheet dt May, 08, 2008 (Ext.M.2) alleges against the delinquent employee to have manipulated results of about 60 to 65 % of Burnt Lime Samples higher Value than the actual results analyzed by the Laboratory Technicians/ Assistants. Whereas the statement of the main complaint MWI Dr.P.K.Tamrakar, the Sr.Asstt. Supdt., as the controller, Investigator in the Development Department of the Company in para 2 at the page 36 in the enquiry - 'from having a look at both the reports, it turns out that 70 and 71 samples altered as 76 and 77 (in percentage) respectively after signature' appears to be highly contradictory to the aforesaid alleged manipulated results of about 60 to 65%. There seems nowhere any tangible proof of alleged damage/loss to the property of the Company as result of aforesaid alleged manipulation.

In such circumstances, where none of the six charges is proved against the lady delinquent employee, yet the dismissal penalty to her for it is high shocking to the conscience of the Labour Court and not germane to alleged misconduct. Hence, it is liable to be set aside under Sec.11 A of the Industrial Dispute Act., 1947. The workwoman accordingly deserves proper relief under the said provision of the Law.

9. In result, it is hereby, in the terms of the reference, responded and accordingly awarded that the action of the Management of Uranium Corporation of India Ltd., in dismissing Smt. Thanushree Nayak from the service of the Company w.e.f. 10.11.2009 is not only quite unjust and unfair but also quite illegal. Hence the concerned applicant/workwoman is entitled to her reinstatement in the service of the Company with full back wages and all financial concomitant benefits.

The OP/Management is directed to implement the Award within one month from the receipt of its following its publication in the Gazette of India.

KISHORI RAM, Presiding Officer

नई दिल्ली, 3 मार्च, 2015

**का.आ. 479.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इन्शुरेन्स कारपोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 15/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 20/02/2015 को प्राप्त हुआ था।

[सं. एल-17011/4/2009-आईआर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 3rd March, 2015

**S.O. 479.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 15/2010) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Life Insurance Corporation of India and their workman, which was received by the Central Government on 22/02/2015.

[No. L-17011/4/2009-IR(M)]

JOHAN TOPNO, Under Secy.

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

#### Reference No. 15 of 2010

#### Parties:

Employers in relation to the management of  
LIC of India

AND

Their workmen

**Present :** Justice Dipak Saha Ray, Presiding Officer

#### Appearance :

On behalf of the Management : Mr. Ranjan Kumar Das, Assistant Secretary (P&IR), Eastern Zonal Office, Kolkata.

On behalf of the Workmen : Mr. B.N.P. Srivastava, Vice-President of the Union.

State : West Bengal

Industry: Insurance

Dated : the 6th February, 2015

#### AWARD

By Order No.L-17011/4/2009-IR(M) dated 22.10.2009 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial

Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

“Whether the 12 daily wage rated employees as per list enclosed, are entitled for regularization on the permanent and regular post of sub-staff of Class-IV category of employees of LIC of India? If affirmative, from what date and to what benefits they are entitled for?”

#### LIST OF CONNECTED AND AFFECTED WORKMEN

Sl. No.	Name of the Workmen	Since when Working	Place of Working
1.	Shri Sheo Kumar Mishra	1980	K.M.D.O.-1
2.	” Ram Biswas	1982	Sarsuna Branch K.M.D.O-2
3.	” Uma Shankar Prasad	1983	K.M.D.O.-1
4.	” Arun Kumar Tewari	1984	K.M.D.O.-1
5.	” Satya Narayan Yadav	1984	- do-
6.	” Bajay Shankar Prasad	1984	- do-
7.	” Satrugan Tewari	1984	- do-
8.	” Pradeep Kumar Singh	1984	CAB, K.M.D.O.-2
9.	” Ranjeet Chakraborty	1984	- do -
10.	” Ganga Prasad Yadav	1984	Kasba Branch K.M.D.O.-2
11.	” Gopal Roy	1984	K.M.D.O.-1
12.	” Madhusudan Das	1985	K.M.D.O.-1

2. The management filed an application dated 10.02.2014 wherein it has been contended that as per the order of the Hon’ble Supreme Court passed on 18.01.2011 all the 12 workmen under this reference have been absorbed and that as per the said order of the Hon’ble Supreme Court the said 12 workmen are not entitled to get any benefit of their past service and accordingly they have not been given any such benefit. It is submitted on behalf of the management that pursuant to the order of the Hon’ble Supreme Court passed on 18.01.2011 the issues of the instant reference stood automatically disposed of and accordingly this reference has come redundant.

3. It is the case of the union that the said order dated 18.01.2011 of the Hon’ble Supreme Court is applicable to the temporary employees of Hyderabad and Secundrabad Divisions as they were the parties/respondents in the concerned civil appeals. So, the said order of the Hon’ble Supreme Court dated 18.01.2011 is not applicable in respect of the 12 workmen of this reference as these workmen were recruited as daily wage staff and not temporary employees.

4. Now, on perusal of the order dated 18.01.2011 of the Hon’ble Supreme Court passed in connection with Civil

Appeal Nos. 953 – 968 of 2005 it is found that the management formulated the scheme for absorption of eligible temporary Class-IV employees and the said scheme was accepted by the respondents of the said civil appeals.

5. It appears from the record that in compliance with the said order of the Hon'ble Supreme Court recruitment process was started and applications were invited from the eligible temporary employees in Class-IV category (Annexure-B of the application dated 10.02.2014 filed on behalf of the management). It further appears from the record that on 30.05.2011 one letter (Ref:Per/MPR/CL4/2011/L040) was issued by the management clarifying the definition of temporary employees. In that letter it has been mentioned that ".....Further, temporary Class IV employee connotes Watchman, Sweeper, Hamal, Gardener, Guest House Caretaker, Electrician, Plumber, daily wagers, temporary part timers etc. ...." From the documents available in the records it further appears that in response to the said circulars, the concerned temporary workers as well as 12 workmen of this reference applied for the post of Peon. Ultimately, all the 12 concerned workmen were selected to the post of Peon and accordingly appointment letters were issued in their favour. In paragraph 3 of the appointment letter it has been specifically mentioned that ".....you shall not be entitled to claim any benefit regarding your post service rendered in any temporary capacity." The concerned workmen after accepting the terms and conditions as mentioned in the appointment letter joined the service.

6. From the above acts of the concerned workmen it is evident that they accepted the clarification of the definition of temporary employee made by the management and accordingly applied for the post of Peon. At the time of joining the said post they also accepted the terms and conditions of the employer that they should not claim any benefit of past service. So, at this stage, the concerned workmen are not entitled to claim that they were not temporary Class-IV employees and accordingly they are also not entitled to get the benefits of their past service.

7. Admittedly, the concerned workmen under this reference have already been appointed in the permanent and regular post of sub-staff of Class-IV category of employees of LIC of India. So, the said issue involved in the reference is disposed of accordingly.

8. On consideration of the facts and circumstances and in view of the discussions made above, it is held that the concerned workmen under this reference are not entitled to any benefit of their past service.

An Award is passed accordingly.

Dated, Kolkata,  
The 6th February, 2015.

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 4 मार्च, 2015

**का.आ. 480.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट (संदर्भ संख्या 01(C)/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02/03/2015 को प्राप्त हुआ था।

[सं. एल-12011/01/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 4th March, 2015

**S.O. 480.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01 (C) of 2011) of the Central Government Industrial Tribunal-cum-Labour Court, Patna as shown in the Annexure in the Industrial Dispute between the management of UCO Bank, and their workmen, received by the Central Government on 02/03/2015.

[No. L-12011/01/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

#### ANNEXURE

#### BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

#### Reference Case No.:- 01 (C) of 2011

#### Between :

The Chief Manager, UCO Bank,  
Zonal Office, Jail Road, Jawaripur,  
Bhagalpur-812001 (Bihar)

#### and

Their workman  
Shri Vivekanand Thakur, represented by  
The Organizing Secretary,  
Indian National Trade Union Congress (Bihar),  
Ghantaghar, Bhagalpur (Bihar)

For the management : Sri Rajni Kant Sinha,  
Sr. Manager, UCO Bank,  
Zonal Office, Bhagalpur

For the workman : Sri N.N. Choudhary,  
(Authorised Representative)

**Present :** Bipin Dutta Pathak, Presiding Officer,  
Industrial Tribunal, Patna

#### AWARD

Patna, the 12th August, 2014

By notification order No. L-12011/01/2010-IR(B.II) New Delhi, dated- 03.01.2011 the Central Government ( Govt. of India ), Ministry of Labour and Employment/Shram aur Rozgar Mantralaya, New Delhi

referred under clause (d) of sub-section 2(A) of section of the Industrial Dispute Act, 1947 ( hereinafter to be referred to as ‘ the Act ‘ ) the following dispute between The Chief Manager, UCO Bank, Zonal Office, Jail Road, Jawaripur, Bhagalpur-812001 (BIHAR) and Their workman Shri Vivekanand Thakur, represented by The Oranizing Secretary, Indian National Trade Union Congress (Bihar), Ghantaghar, BHAGALPUR (BIHAR) for adjudication to the Industrial Tribunal, Patna.

### SCHEDULE

“Whether the action of the management of UCO Bank, Zonal Office, Bhagalpur in imposing the punishment of lowering down the basic pay by two stage in the time scale pay on Shri Vivekanand Thakur, Head Cashier vide order dated 15/11/2008, is legal and justified? If not, what relief the workman is entitled to?”

2. It appears from the reference that earlier the Central Government after considering the said reference declined adjudication on 17.02.2010 and the applicant aggrieved with the decision filed a C.W.J.C. No. 18116 of 2010 before the Hon’ble High Court of Judicature at Patna. The Hon’ble High Court vide order dated 08.11.2010 and set aside the order dt. 17.02.2010 and directed to refer to Industrial Dispute to the Industrial Tribunal, Patna in accordance with law.

3. Both the parties appeared and filed their respective written statement and examined the witness. By order dated 17.09.2013 in the matter of fairness of departmental enquiry it was found that nothing appeared from the enquiry that any error has been committed in the domestic enquiry. As such it was found and held that domestic enquiry was fair. Direction was given to both the parties to file list of witnesses and documents.

4. According to the written statement filed on behalf of the workman on 03.02.2011 the workman Vivekanand Thakur was initially appointed as peon at Chalna Branch of the Bank on 28.12.1983 by the Asstt. General Manager/ Zonal Manager, Patna. Thereafter when workman passed matriculation in Ist Division and he was appointed as clerk on 03.03.1986 by the Asstt. General Manager/Zonal Manager, Zonal Office and posted at Goradih branch of the bank. Thereafter, he has been appointed as head cashier, category-I by the Asstt. General Manager/Zonal Manager, Zonal Office, Patna and posted him at Baijani branch on 30.09.2003. He was transferred to Belhar branch on 12.05.2008. He was appointed as head cashier category-II on 27.09.2008. The Chairman and Managing Director, being principal officer of UCO Bank has not appointed the Chief Officers posted at Zonal office of UCO Bank as disciplinary authority to take disciplinary action against the workman. Service record of the workman remained clean and unblemished from 28.12.1983 to 08.02.2008 for twenty four

years in the service of UCO Bank. He worked as clerk in Goradih branch with Md. Sajjad Ahmad from 1993 to 1998 for five years without giving any opportunity to him to complain against the workman. Md. Sajjad Ahmad lodged a complaint with Asstt. General Manager, Zonal Office, Bhagalpur on 06.01.2006 against the workman but the complaint letter dt. 06.01.2006 does not bear acknowledgement of Sri S.P.Choudhary, Asstt. General Manager.

It has been stated that one Sri A.K.Verma joined as Chief Officer at Zonal Office, Bhagalpur on 29.05.2006 and he was made incharge to approve, confirm to grant permission to the branch manager to pass T.A. and Diem allowance bill of those workman and the officers who are deputed to other branches for bank’s job. The branch manager of Baijani branch presented a T.A. and Diem Allowance bill on 05.09.2006 for Rs 56507/- for 225 days before the Chief Officer Sri A.K. Verma who demanded a bribe Rs. 25000/-. The workman refused to pay bribe of Rs. 25000/- to the Chief Officer Sri A.K.Verma and the workman approached to Asstt. General Manager who advised the branch manager of Baijani branch to make payment of aforesaid bill. Being frustrated, the Chief Officer Sri A.K.Verma contacted Md. Sajjad Ahmad and then clerk Pramod Roy and secured from him a cooked complaint in back date- 06.01.2006 with fictitious false, imaginary, cooked and invented allegations against the workman. Complaint was back dated and Chief Officer of Sri A.K.Verma arbitrarily and unauthorisedly issued a show-cause notice on 12.09.2007 to the workman proposing punishment to be imposed upon the workman a fine of Rs. 25000/- if he accepts false charges framed on the basis of aforesaid complaint dt. 06.01.2006 of Md. Sajjad. As per Bipartite Settlement dated 10.04.2002 read with para-565 of the Sastri Award a fine can be imposed upon the peon workman but not upon the head cashier workman.

The workman did not accept the charges disciplinary authority without delegation of power issued a charge sheet on 09.02.2008 constituting charge of gross misconduct under clause 19.5 (C) which read as “Drunkenness or riotous or disorderly or indecent behaviour on the premises of the bank and clause 19.5 (e)” which read as “wilful insubordination or disobedience of any lawful and reasonable order of the management or of a superior” of the Bipartite Settlement dated- 19.10.1966.

5. Much details about the charges has been stated but it has been found that domestic enquiry was fair so it expedient to proceed further.

6. Written statement has been filed on behalf of the management on 23.08.2011 stating therein that Sri Bibekanand Thakur was posted as head cashier in UCO Bank at Baijani branch and he was served with the show-cause notice dated 12.09.2007 for his terrifying, aggressive and indecent behaviour with Sri Sajjad Ahmad, the then



branch manager on 06.01.2006. Workman submitted his reply dated- 29.09.2007 to the Chief Officer, UCO Bank, Zonal Office, Bhagalpur wherein he denied the allegation levelled against him. The explanation submitted by Sri Thakur was carefully examined and found not satisfactory and as such the Chief Officer (Disciplinary officer ) issued memo of charge dated 09.02.2008 which was accordingly served to Sri Thakur wherein altogether four charges were levelled against him. Show cause was asked reply of which was submitted on 23.02.2008. The reply was considered and found not satisfactory. Enquiry was ordered to be conducted. Ganga Nandan Singh was appointed as enquiry officer and Sri Kavindra Mishra was appointed as presenting officer, Sri Thakur was asked to give name of defence representative. During course of enquiry several documents were produced and exhibited. Name of the management witness was also submitted. Enquiry was conducted on several dates wherein Sri Thakur was provided ample opportunity to defend his case and was given opportunity to cross-examine the management witnesses. Sri Thakur could not supply the name of defence representative not he brought any onsent letter. The entire enquiry was conducted in presence of Sri Thakur he was provided sufficient opportunity to defend his case after conclusion of the enquiry the presenting officer was asked to submit written brief, which was submitted on 08.07.2008. Sri Thakur submitted written brief on 26.07.2008 Enquiry officer found allegation/charge no. 1, 2 and 4 as proved and allegation /charge no. 3 as partially proved. Second show cause notice was issued the date of personal hearing was fixed on 27.10.2008 in Zonal office of the bank and in response to that Sri Thakur appeared on 27.10.2008 and he was given personal hearing and Sri Thakur was also provided opportunity for filing reply on the enquiry report of enquiry officer which was filed on 03.10.2008 which was carefully examined by the disciplinary authority who after going to entire materials, awarded the "Reduction of basic pay by two stages in time scale of pay for a period of punishment three year with further direction that he will not earn increment of pay during the period of such reduction and on expiry of such period, reduction will have effect of postponing further increment of pay." Sri Thakur was found guilty on 30.03.2010 order of punishment was passed. Sri Thakur compulsorily retired from the service of the bank. Against the said order he preferred service appeal before the Appellate Authority which was rejected.

7. Rejoinder on behalf of the workman to written statement of management has been filed on 08.09.2011 stating therein the bank has never appointed the Chief Officer of the Zonal Office as disciplinary authority. As such show cause notice dated 12.09.2007 was abinitio void. (a) It has been submitted that Chief Officer of the Zonal Office has never been appointed as disciplinary authority in the case of workman working under the administration of the Zonal office as such charge sheet dated- 09.02.2008

issued by the Chief officer Zonal Office Bhagalpur was abinitio void. (b) Charge sheet framed in terms of chapter-19 of the Bipartite Settlement dated 19.10.1966 was superseded, substituted and became dead and inoperative vide new memorandum of settlement dated 10.04.2002. As such entire enquiry right from dated 09.02.2008 to the order of punishment passed on 15.11.2008. Vitiating, abinitio void without jurisdiction and not maintainable and sustainable in the eye of law. (c) Charge sheet of gross misconduct is not applicable and invocable against the workman. (d) Enquiry officer denied to shift the venue of enquiry to place of occurrence at Bajani branch and denied to examine proposed defence witnesses and to issue notice to the official witness of UCO bank. (e) Enquiry officer denied to call for defence documents in the custody of Zonal office and branch office Bajani branch. (f) The management did not examine villagers of Bajani and Shiv Kumar Thakur who are said to be present on the place of occurrence. (g) The management did not change the enquiry officer who had bias, malafide and malice against the workman. (h) The management did not change the unauthorised disciplinary authority the chief officer Sri A.K.Verma who had been demanding Rs. 25000/- as bribe to pass T.A. Bill of the workman. (i) The show cause notice dated 16.05.2008 issued by the chief officer, Sri A.K.Verma to the workman proves personal grudge and vengeance against the workman which disqualified to be disciplinary authority in the case of the workman, therefore the enquiry as well as proceeding against the workman are vitiated. (j) The finding of the enquiry officer is complete non speaking unreasoned beyond charge and beyond evidence on record. (k) Punishment imposed upon the workman has not been prescribed in the Bipartite Settlement as such the same is abinitio void, without jurisdiction.

### FINDINGS

8. From the documents exhibited on behalf of the management it appears that appears from Ext.- M/1 that Sajjad Ahmad, Branch Manager, UCO Bank, Bajani has made complaint before Assistant General Manager, Zonal office, Bhagalpur on 06.01.2006 stating therein that V.N.Thakur, Head cashier, always misbehave with him which has informed time to time to Assistant General Manager, Zonal office. In spite of trying to understand Sri Thakur does not take interest in the work of the branch and instigate to other staff for not doing work. Sri Thakur puts undue pressure in the matter related to loan today. On 06.01.2006 in the evening branch manager was going to home after bank hour, then in the way Mr. Thakur, by his motorcycle, retrained him and abuse him and was adamant to assault him. By that time Sri Arbind Kumar Choubey @ Nanda Choubey who is friend of Sri Thakur and is advocate in Bhagalpur Court arrived and also abused him and was adamant to assault him and abused him by tailing Miya. Pramod Kumar Roy, clerk, was also sitting in the back to

motorcycle of he branch manager who is witness and on his request he put signature on the application in the capacity of witness. It has also been stated that Mr. Choubey wanted loan for motorcycle and complainant branch manager in order to ascertain his income asked him to show return of income tax, but he was not ready and due to that cause he with Thakur wanted to assault him and misbehaved with him. Even in Sept. 2005 Sri Thakur abused him and threatened to assault him. It has been stated that Mr. Thakur is local resident and always wanted to put undue pressure in the loan matter. So it has been prayed that action be taken against Mr. Thakur.

9. It appears from Exts. M/2 that chief officer-cum-disciplinary authority sent letter on 12.09.2007 to Mr. B.N.Thakur in respect of his indecent behaviour stating that on 06.01.2006, while the then branch manager, Mr. Sajjad Ahmad was going to home on his motorcycle, then Mr. Thakur restrained him and abused him and was adamant to assault him. At the time Sri Pramod Roy the then clerk at Bajjani branch was present there. It has been stated that Mr. Thakur put undue pressure in loan matter. Sri Arbind Kumar Choubey @ Nanda Choubey was taking loan for motorcycle and Mr. Sajjad Ahmad accordingly to rules demanded income tax return which was refused by Mr. Choubey. Then Mr. Thakur along with Mr. Choubey has committed the offence. Mr. Thakur did not take interest in the work of branch and instigates other employee for not doing the work. As such bank suffered loss in work and image of bank has been tarnished. Further it has been stated that punishment has been awarded as fine of Rs. 25000/- ( Rs. Twenty Five Thousand only ) without issuing regular charge sheet in accordance with Bipartite Settlement dated 10.04.2002. Seven days had been given to Mr. Thakur to file his show cause and if he does not voluntarily accept his guilt then regular charge sheet will be issued. But show cause is not filed within the stipulated period, then it will be deemed that he has not to file any show cause and disciplinary action will be taken.

10. From Ext. M/3 it appears that charge sheet has been issued against Mr. B.N.Thakur on 09.02.2008 in respect of the allegation made against him. It appears from Ext. M/4 that enquiry was conducted. Sri Ganga Nandan Singh was made enquiry officer and Mr. Kavindra Mishra was made presenting officer and Mr. B.N.Thakur was delinquent employee. There was sitting on 15.04.2008 at Bahadurpur branch against Mr. Thakur. In enquiry against him. Charge sheet was read over to Mr. Thakur and Mr. Thakur denied the charge saying that it is false and concocted. Mr. Thakur in reply to the question about defence then Mr. Thakur replied that name of defence representative will be submitted in next meeting. Mr. Kavindra Mishra, presenting officer, stating that documents and list of witness will be submitted in next meeting. Meeting was adjourned to 2nd May, 2008.

On 2nd May, 2008 presenting officer submitted the documents which are as follows:-

- (i) Complaint petition dt. 06.01.2006 to Assistant
- (ii) General Manager, UCO Bank, Bhagalpur by Mr. Sajjad Ahmad.
- (iii) Photo stat of attendance register of January, 2006.
- (iv) Photo stat of extract of ledger book dt. 06.01.2006.
- (v) Photo stat of written submission of Mr. Sajjad Ahmad.
- (vi) Photo stat of written submission of Pramod Roy.
- (vii) Photo stat of written submission of Shiv Pd. Thakur.
- (viii) Photo stat of submission of Sri Pappu Kumar.
- (ix) Photo stat of submission of Saroj Kumar Pandey, customer of branch Bajjani.
- (x) Presenting officer stated that he will submit list of witness and remaining documents in next meeting. Mr. Thakur stated that defence representative is out of Bhagalpur town so in the next meeting he will submit his name and consent letter. Enquiry was adjourned to 15th May, 2008.

11. On 15.05.2008 presenting officer submitted list of witness who were Mr. Sajjad Ahmad Ex-Manager, Bajjani branch (ii) Md. Pramod Roy who was posted at Bajjani branch and Pappu Kumar who was also posted at Bajjani branch. Presenting officer presented his case and read over the charges. There were six charges.

**Charge No. (i) :** was in respect of restraining Md. Sajjad Ahmad on 06.01.2006 after bank hour while he was going to residence and Mr. Thakur abused him and was adamant to assault him.

**Charge No. (ii) :** It also respect of that allegation it has been stated that at the time of misbehave and abusing him, Sri Pramod Roy the then clerk of Bajjani branch, was present there.

**Charge No. (iii) :** was Mr. Thakur always put assault on Mr. Sajjad Ahmad for illegal loan. His one friend namely Sri Arbind Kumar Choubey @ Nanda Choubey applied for motorcycle loan and Mr. Sajjad Ahmad demanded copy of income tax return to ascertain the income, which was refused by Mr. Choubey. Then alongwith Mr. Choubey, Mr. Thakur committed the offence.

**Charge No. (iv) :** was that Mr. Thakur did not take interest in the work of branch and used to instigate other employees for not doing work. As such bank sustained loss in disposal of work and customer service was affected.

**In respect of Charge no. (v) & (vi) :** it has been stated that Mr. Thakur violated 19(5) of bipartite settlement

dated 19.10.1966. At the time of occurrence dated 06.01.2006 all the employees were present in branch. Presenting officer stated that he will produce witness on 16.05.2008.

Mr. V.N.Thakur stated that he does not want to appoint defence representative. He further stated that after the statement ( evidence ) of witness on behalf of bank. He will appoint defence representative for cross-examination. He also stated that he will always participate in enquiry. Mr. Thakur also stated that he has been transferred to Belhar branch on 12.05.2008 and who participate in the enquiry permission of branch manager is necessary. It has been requested by him that branch manager Belhar be directed to relieve him one day before to prepare for enquiry because place of enquiry is 25 K.M far from Belhar branch. It has been mentioned by the enquiry officer that if Mr. Thakur does not submit name of defence representative and is consent letter, then it will be assumed that Mr. Thakur will defend himself. Further request for time to prepare for enquiry was not found proper. Enquiry was adjourned to 16.05.2008.

On 16.05.2008 enquiry officer, presenting officer and delinquent charge sheeted employee were present. Management witness no.-1 Md. Sajjad Ahmad was examined, he stated that on 06.01.2008 he was working at Bajjani branch and on that date chief cashier namely V.N.Thakur, after closure of cash put pressure to grant loan to Mr. choubey. This witness told him not to put pressure in loan matter. Then Mr. Thakur became angry and began to abuse. This witness told him that he is not doing good. Thereafter, this witness came out of branch and move ahead on motorcycly. Near the house of Shiv Singh, Mr. Thakur restrained his motorcycly and abused him and begin to assault. It is pertinent to note that in complaint petition (Ext.-M/1) name of the house of Sri Shiv Singh has not been mentioned.

Further this witness stated that Mr. Choudhary and one person also arrived as told this witness Miyan and told to assault Miyan. This further stated that earlier in September, 2005 Mr. V.N.Thakur arrived inside the cash department and told how this manager arrived and threatened to tie with rope and to assault. At that time Pappu Kumar one of the staff intervened and separated Mr. Thakur. Further witness stated that being the local person Mr. Thakur always used to put undue pressure in loan matter. In reply to the question put by presenting officer this witness replied that he was posted at Bajjani branch since 09.06.2003 to 26.08.2006. Sri V.N.Thakur was also posted there. V.N.Thakur was posted at Bajjani branch since Oct. 2003 and relation with him was general. This witness is acquainted with Sri V.N.Thakur since March-1993. This witness worked with Sri V.N.Thakur at Belhar branch, from March 1993 to Nov. 1998 where this witness was chief cashier. At that time V.N.Thakur was clerk at

Goradih branch. At that time there was general behaviour of Sri Thakur with him. At Bajjani branch behaviour of V.N.Thakur with other staff was no good. V.N.Thakur used to disturb in work of branch so that the branch manager may be defamed. Sri V.N.Thakur did not work which entrusted to him. This witness further stated that Ext.-ME/4 and Ext. ME/4 was written by the then branch manager of Bajjani branch.

This witness further stated that after bank hour when he was going to his residence, then Sri Pramod Roy, the then clerk of Bajjani branch was with him on his motorcycle. This witness further stated that on 06.01.2006 when motorcycle on this witness was restrained then Sri Shiv Pd Thakur was with V.N.Thakur. This witness further stated that Sri V.N.Thakur had no interest in his work and as such customer service was much effected. Sri V.N.Thakur asked for time for cross-examination of this witness. Presenting officer put objection. Thereafter, Sri V.N.Thakur agreed to cross-examine this witness. In cross-examination Mr. Sajjad Ahmad replied that complaint petition against Sri V.N.Thakur was written by him. This witness is acquainted with Mr. thakur since 1993. When this witness joined at Goradih branch. At goradih branch there was general behaviour of Mr. Thakur with this witness. At Bajjani branch V.N.Thakur begin to put pressure in loan matter and he got loan sanctioned in name of his brother Sajjan Kumar Thakur. Which became NPA. He also stated that at Bajjani branch only Mr. Sajjad Ahmad, Sri Pramod Roy was not local person. Further this witness in cross-examination stated that Bajjani branch used to open at 10.00 A.M and closed at 5.00P.M on 06.01.2006. He further stated that inside the branch qurel began and scuffle and began abusing in front of house of Sri Shiv Pd Singh at 5.30 P.M. This witness told that it is false to say that doctor has advised Mr Thakur for not driving motorcycle or the period from 03.01.2006 to 10.01.2006. This witness further replied that once this witness gave office order to Mr. V.N.Thakur for disposal of working Mr. Thakur did not put his signature on office order thereafter only oral order was given to him. This witness also replied that there was sweet relation between this witness and customer.

12. Thereafter M.W-2 Sri Pramod Kumar Roy was examined. This witness stated that on 06.01.2006 there was altercation between Mr Sajjad Ahmad ( then branch manager ) and V.N.Thakur ( charge sheeted employee ) in the branch. Thereafter at the time about 5.00 P.M after closing the branch Md. Sajjad Ahmad was going to home on motorcycle and this witness was behind him on motorcycle. After some distance ( about ½ K.M ) Sri V.N.Thakur over took to motorcycle of Mr. Sajjad Ahmad and restrained him and abused him and this witness was suffering from fracture of leg. As such after falling down from motorcycle, he was standing with the held of Lathi. There was scuffle between them. One advocate also arrived and abused to Mr. Sajjad Ahmad calling him Miyan and



told to assault him because Sajjad Ahmad had not granted him loan. Some villager arrived and saved them. This witness advised to Branch manager to give report at police station but Mr Ahmad was not agree. Mr. Sajjad Ahmad went toward home and went to Regional office and informed about them occurrence.

This witness identified his signature on Ext.- ME-1. This witness admitted his written statement signed by him, which are ME-1 and ME-5. In cross-examination by charge sheeted employee this witness stated that he is acquainted with charge sheeted employee from the period he joined at Baijani branch. Further he has stated that he had given charge of ledger to charge sheeted employee. He has also stated that on 06.01.2006 branch was closed at about 5.15 P.M. This witness is not acquainted as to the facts that who had written complaint petition which was given in Regional office.

M.W-3 Pappu Kumar is peon of the branch who had also stated that he was on duty on 06.01.2006 at Baijani branch as part time sweeper. Further this witness stated that always there used to be altercation between Sri. V.N.Thakur and Md. Sajjad Ahmad in the branch. Once there was altercation between them and by intervention of this witness and choudidar and matter was settled. There also used to happen altercation between Sri V.N.Thakur and customer when customer gave rotten notes. This witness denied that Mr. Thakur instigated other staff for not doing work. Only Mr. Thakur had put pressure for grant of loan to his brother. Next date was fixed for enquiry on 17.05.2008.

On 17.05.2008 charge sheeted employee Sri V.N.Thakur was directed to submit list of evidences and witness. But Sri V.N.Thakur expressed inability to submit the same on that date. Thereafter enquiry was adjourned to 31.05.2008, On 31.05.2008 Sri V.N.Thakur replied that he has already sent list of documents on 27.05.2008 through branch manager Belhar. Again he submitted photo state of the list of document and said that it is essential and important and prayed to call for the same. He has demanded photo stat of those documents. He also submitted documents which are—(1) duty of head cashier class-1-DE-1 (2) Photo stat joining letter of Sri V.N.Thakur dated-28.12.1983 DE-2 (3) He joined as head cashier “C” vide letter No.- ROP/PER/Misc./03-04/82 dated- 30.09.2003 (4) Photo stat of FIR against Pramod Roy and DE-4.

He submitted list of Nine person as defence witness which are—(1) Sri A.K.Verma, Chief Officer, Regional Office, Bhagalpur, (2) Sri S.P.Choudhary the then Regional Manager, Bhagalpur, (3) Sri R.K.Jain , the then Regional Manager, Bhagalpur, (4) Sri Subash Chandra Jha, constable at Baijani (5) Sri Satyanand Jha, pensioner at Baijani branch, (6) Sri Gouri Shankar Thakur, account holder of Baijani branch, (7) Sri Abhay Kumar Jha, account holder, Baijani branch (8) Sri B.P.Pandey, pensioner at Baijani branch,

(9) Sajjan Kumar Thakur, account holder, Baijani branch, (10) Sri Digamber Singh, account holder Baijani branch. It has been noted that all accounts holder are unable to attend Bahadurpur branch and charge sheeted employee is also unable call them at his own cost. He also stated that place of occurrence in charge sheet is at Baijani village. So statement of defence witness be recorded at Baijani branch. He also submitted list of defence documents which was forwarded by Belhar branch. Sri V.N.Thakur was directed to submit name of defence representative with his consent letter. He was also requested to submit the documents related to enquiry. He was also directed not sent documents through post/courier. Enquiry was adjourned to 12.06.2008. Sri V.N.Thakur did not submit the name of defence representative with his consent letter. Presenting officer was directed to submit the documents called for by charge sheeted employee. Presenting officer stated that serial no.-1 to 5 of the list of documents submitted by Sri V.N.Thakur is not related with charge sheet. Presenting officer also stated that defence Ext.- DE-6 ( entire service book ) is not related with the charge. So it can not be made available. If Sri Thakur demands in special documents related to charge sheet from service book then it will be made available. Enquiry was adjourned on 07.07.2008.

On 07.07.2008 presenting officer stated that documents serial no.- 7,8,11 & 12 of DE-6 are not related with charge. So it can not be produced, except the documents at serial no.- 3 no documents is related with charge. Sri V.N.Thakur did not submit the name of defence representative with his consent letter. Thakur was directed to produce the witness at Bahadurpur branch which was refused by Sri V.N.Thakur. V.N.Thakur stated that he replied of charges on 23.02.2008 which has been marked as DE-7 and charges against him is false and concocted. So he be made free from the charges. Presenting officer and charge sheeted employee were directed to submit written brief within a week and enquiry was concluded.

It appears from Ext.- M/1 that Sajjad Ahmad has made complain on 06.01.2006 against Sri V.N.Thakur before Asstt. General Manager, Regional office, UCO Bank, Bhagalpur in which place of occurrence has been stated in the way to the residence of Sajjad Ahmad. No specific description place of occurrence has been given. But in his evidence at the time of enquiry proceeding. He has stated that occurrence happened near the house of Sri Shiv Singh.

In his evidence before this tribunal Sajjad Ahmad has been examined as management witness no.-1 in which he has stated that V.N.Thakur had abused inside the bank during working hour and when branch manager was going and out sides the branch then V.N.Thakur was adamant to assault him. He has not stated near the house of Sri Shiv Singh. In cross- examination he had stated that occurrence happened in the year 2004-2005 the day is not remembered



by him. What word was used in abusing was written in complaint petition or not is not remembered by him. He further stated that what was written in the complaint is not remembered by him. Further he has stated in para-5 that complaint petition was written by him and again he has stated that was written by one of the staff namely Abuzar of Gourhatta branch. In para-6 he has stated that occurrence of adamant of assault happened near the house of Navin Pandey. Further he has stated that in Ext. M/9 during investigation he has stated that occurrence happened in front of house Sri Shiv Singh. In para-7 he has stated that at Goradih branch he worked with V.N.Thakur.

From evidence of Sajjad Ahmad it appears that in his complain he has not stated about the house of Shiv Singh, near the place of occurrence. In his evidence in tribunal in para-6 he has stated that occurrence near the house of Navin Pandey as such there is difference in the evidence of the main witness Mr. Sajjad Ahmad. Sajjad Ahmad stated in para-4 that occurrence happened in the year 2004-05. Why during the enquiry has his complain petition he has stated that date of occurrence is 06.01.2006. As such correct date of occurrence has not been stated by this witness.

Management witness no. 2 Pappu Kumar has stated that he has not seen the occurrence happened between Sajjad Ahmad and V.N. Thakur. He has not personal knowledge of the case. Even in the enquiry he has stated that he had not seen the occurrence.

During the enquiry name of Pappu Kumar, Sweeper of the bank has stated by Sajjad Ahmad and it has been stated that when quarrel happened inside the bank then Pappu Kumar intervened and separated of both the them. This fact has been stated by Pappu Kumar during the enquiry. But in the tribunal here not stated anything about the occurrence.

Management witness no.03 Pramod Roy stated in his examination in chief that always quarrel used to happen between V.N. Thakur and branch manager for small matters and on 06.01.2006 after bank hour this witness was going on motorcycle with Sajjad Ahmad then in the way V.N. Thakur and Shiv Kumar Thakur over took motorcycle of Sajjad Ahmad and abused.

In cross-examination he has stated that he is acquainted with Navin Chandra Pandey. He was clerk in UCO Bank at Gourhatta branch and his residence is at distance of one forth k.m from UCO Bank, Bainjani branch. House of this witness at Barari and house of Sajjad Ahmad at Bhikhanpur, Bhagalpur. This witness could not tell in front of whose house occurrence of abusing happened.

Para-3 this witness has stated that he does not know Sri Shiv Singh. Further in para-4 he has stated that he Shiv Kumar Thakur is daily worker. He and one advocate he separated the quarrel. This witness have no knowledge

what was stated by Sajjad Ahmad in his evidence. As such this witness could not tell in front of whose house occurrence happened. While during enquiry Pramod Roy has stated about the occurrence and has also stated that one advocate had also abused Sajjad Ahmad and villagers had intervened but in the tribunal this witness stated that advocate has settled the quarrel.

Defence witness was not produced before this tribunal and even during enquiry. Charge against V.N.Thakur is based on the complaint petition filed by Sajjad Ahmad date of occurrence is 06.01.2006. Charges levelled against Sri V.N.Thakur mainly that while the then Sajjad Ahmad was going to home on 06.01.2006 after bank hour then in the way V.N.Thakur restrained him and abused him and was adamant to assault. Pramod Roy was present there. On Arbind Kumar Choubey @ Nanda Choubey applied for motorcycle loan and Sajjad Ahmad asked for copy of income tax return which was refused by Nanda Choubey then Mr. Thakur and Nanda Choubey committed the occurrence. Mr. Thakur had no interest in the work and he used to instigate for other staff for not doing the work.

The charges levelled against the workman will be evaluated on the basis of evidence adduced in the tribunal. In the evidence Sajjad Ahmad has not stated about loan matter of Arbind Kumar Choubey @ Nanda Choubey and nothing has been stated about Nanda Choubey for this charge could not succeed.

Sajjad Ahmad in his evidence has not stated that V.N.Thakur had no interest in the work of branch and he used to instigate of other staff for not doing the work. So this charge could not succeed.

Now the main charge is about the occurrence happened 06.01.2006 after bank hour while going to his house. But years of occurrence has stated by Sajjad Ahmad in cross-examination in year 2004-05. This witness, Sajjad Ahmad could not state what was written in his complain because he does not remember. Further he stated in para-6 that occurrence happened near the house of Sri Navin Pandey by during enquiry he has stated that occurrence happened the house of Sri Shiv Singh which has been admitted by him in his evidence. Management witness no.-2 Pappu Kumar had not seen any quarrel and he has no knowledge of the case. As such he has not supported the charge. M.W-3 Pramod Roy has stated that Navin Chandra Pandey was posted as clerk in UCO Bank at Gourhatta branch. But he has not stated that occurrence happened house near the Navin Chandra Pandey. Further witness he stated that he can not say in front of whose house occurrence happened. Further he stated that one advocate had settle the quarrel. As such there was no dispute with any advocate. When the main complainant Md. Sajjad Ahmad has not stated that date of occurrence and complain was written by one staff Abuzar who was staff of Gourhat branch and he has not been examined. So there was serious

contradiction in complain petition evidence of Sajjad Ahmad during the enquiry and evidence of Sajjad Ahmad in tribunal. Sajjad Ahmad also not stated in examination in chief that he was going on motorcycly with Pramod Roy then he was restrained by Sri. V.N. Thakur. In result main charge levelled against the V.N. Thakur could not succeed. This contradiction have not been explained by the management as to how this contradiction will be over looked. As such non of the charges levelled against V.N. Thakur has been proved and established by the management in this tribunal.

Since the management could not produced and establish the charges in this tribunal beyond any

reasonable doubt. So reference is answered that the action of the management of UCO Bank, Zonal Office, Bhagalpur in imposing punishment of lowering down the basic pay by two stages in the time scale pay on Shri Vivekanand Thakur, Head cashier vide order dt. 15.11.2008 is not legal and not justified. As such when the action of the management has been found not legal and not justified then the workman is entitled to all consequential benefits of which he is entitled to.

This is my award accordingly.

BIPIN DUTTA PATHAK, Presiding Officer